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Program Requirements Memoranda for Fiscal Year 1981: Municipal Wastewater Treatment Works Construction Grants Program

(U.S.) Environmental Protection Agency
Washington, DC

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Program Requirements Memoranda for Fiscal Year 1981

Municipal Wastewater Treatment Works Construction Grants Program

MCD-02.11

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To assure national uniformity in program implementation and to provide policy direction in integrating the various complex requirements of the Federal water pollution control program, EPA headquarters periodically issues Program Requirements Memoranda (PRM's). The PRM's convey basic program policy to which adherance is mandatory for those to whom it is directed.

This booklet contains all PRMs which are effective in Fiscal Year 1981 beginning with the date of this publication.

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ADDENDUM TO MCD 02.11

(Insert with Preface)

PRMs, listed on the last page of PRM No. 81-1 are discontinued for Step 1 grants issued after the effective date of "Facilities Planning 1981." Grantees preparing Facilities Plans under Step 1 grants awarded prior to publication of "Facilities Planning 1981" may use either these PRMs or "Facilities Planning 1981" at the grantee's option.

Availability of "Facilities Planning 1981" will be announced in the Federal Register. Applicant/grantees will receive copies of "Facilities Planning 1981" from the EPA region or delegated State. Informational copies will be available from:

General Services Administration (8BRC)
Centralized Mailing Lists Services
Building 41, Denver Federal Center
Denver, Colo. 80225

This booklet contains all Program Requirements Memoranda (PRMs) which are effective in Fiscal Year 1981 beginning with the date of this publication. Included are PRMs 81-1 and 81-2 which were approved after the last set of PRMs was published (MCD 02.10). Removed from this compilation are those PRMs which were superseded by later regulations or PRMs or otherwise outdated.

It is the Environmental Protection Agency (EPA) policy to publish a composite set of updated and new PRMs annually. The next set is scheduled for publication in October 1981.

Agency policy on PRMs, as described in PRM 81-1, is as follows:

"Beginning October 1, 1981, only the requirements contained in the Fiscal Year 1982 PRM document will be effective for grants awarded in Fiscal Year 1982.

For Fiscal Year 1981, grants awarded after the publication of the January issuance of PRMs (MCD 02.11) will be bound by policy contained in that issuance. Future PRMs will be circulated in draft form for review as they arise. However, the effective date of each new PRM will be the October following its approval.

Annually, a purged set of old PRMs together with any new PRMs, approved during the previous year, will be issued in one document. Regional and delegated State staff will have the opportunity to participate actively in this purging and approval process. Policies contained in the single document will be effective as of the beginning of the new fiscal year for all grants awarded during the fiscal year."

Municipal Wastewater Treatment Works
Construction Grants Program

PROGRAM REQUIREMENTS MEMORANDA

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UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

November 8, 1973

PROGRAM REQUIREMENTS MEMORANDUM PRM 75-6
PROGRAM GUIDANCE MEMORANDUM
NO. PG-20

TO: All Regional Administrator
Attn: Director, Air and Water Programs Division

FROM: Harold P. Cahill, Jr. H. P. Cahill Jr.
Director, Municipal Waste Water Systems Division

SUBJECT: Adequacy of Treatment Certification

All EDA and HUD assisted projects must conform to the minimum treatment requirements required for EPA construction grant projects. On EDA and HUD projects that are presently served by primary treatment only, adequacy of treatment certification may be issued provided that the municipality obtains a NPDES Municipal permit, or an identification of permit discharge conditions, in accordance with Section 402 of the Act. The permit must contain a firm schedule for meeting the treatment requirements of Section 301(b)(1)(B) and (C).

This supersedes Program Memoranda No. 72-7 and No. 72-9.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

SUBJECT: Approval of Reimbursement Projects Not Previously Serviced by EPA

DATE: APR 17 1974

FROM: John T. Rhett
Deputy Assistant Administrator for Water Operations (AW-446)

John T. Rhett

TO: Regional Administrators
ATTN: Air and Water Program Directors

PROGRAM REQUIREMENTS MEMORANDUM PRM 75- 1
Program Guidance Memorandum
PG-30

This is in response to a need for more specific guidelines required to properly review and process applications for reimbursement under Section 206 which were not previously serviced by EPA. The Office of General Counsel has provided us with an opinion regarding the legal issues involved and the mandatory requirements which applicants must meet. It is attached for your information and should be reviewed before undertaking action on the "woodwork" projects.

So that the review can be conducted using itemized specific requirements, we are supplementing the legal opinion with a checklist of applicable provisions. These provisions represent minimum compliance requirements to be met by the previously unserviced projects prior to approval for award.

Initially it is necessary that certain actions on each of the projects be fulfilled by the State. They are as follows:

1. Provide a copy of the State Permit, or provide certification that the project was designed and built in accordance with regulations and requirements of the State Agency.

2. Certify that the facility, upon completion, was operated consistent with State requirements. (If the facility is not currently being operated, an explanation of the mitigating circumstances must be provided.)

3. Provide a statement to the effect that the project was constructed for benefit of public at large. The statement must address the public benefits derived by project construction; the relation of the ultimate cost of constructing and maintaining the works to the public interest; and the public necessity of the treatment works.

Upon receipt of the above, the remainder of the review will be based on information submitted by the applicant. Since it is likely that all of the needed items of data will not be on hand with the applicant's original application, it will be necessary to request them in writing. In that letter, it is important to remind the applicant of the fact that eligibility for reimbursement is limited solely to treatment works as defined in Section 8 of the Federal Water Pollution Control Act prior to the October 18, 1972 Amendments thereto, i.e., sewage treatment plants including additions, modifications, alterations, etc., and appurtenant intercepting and outfall sewers, force mains and pump stations. Collection sewers, etc., are not eligible for reimbursement grant consideration.

In addition to the fact that the municipality's application must have been on file in the regional office by January 31, 1974, with the elements of data required in the published regulations, the following items are also needed to determine its eligibility.

1. Certification that standard procurement procedures were followed--with all contracts awarded to the lowest responsive bidder(s); and that proof of advertising, bid tabs, etc., will be available upon audit. Certification that all costs applied for have been paid and that evidence of such payment will be available upon audit.

2. Certification that the contractors paid the same general level of wages to their employees as was paid to those similarly situated at the time.

3. A resolution from the applicant's governing body authorizing a representative, by name and title, to execute and file all documents regarding the project.

4. Evidence that the project was approved by the appropriate planning agency. (Applicable to projects applying for the 10% planning bonus.)

5. A true copy of each executed contract document.

6. One copy each of the approved final construction estimate and bills submitted to the municipality for engineering services rendered. Requests for grant assistance for legal costs, bond costs, administrative costs, etc., should be discouraged.

However, where applicant desires such grant support, bills pertaining to such costs must be furnished. If the construction estimate does not include signatures of the consulting engineer, the contractor, and the municipality, appropriate documentation substantiating the concurrence of the three parties should accompany the construction estimate.

7. Compliance Report Form (158-R0034); EPA Form No. 4700-4--to indicate nondiscrimination.

8. In addition, the grantee must be notified that, should his project be otherwise approved for reimbursement, in accepting the grant he must also accept the condition to acquire and maintain flood insurance where applicable and available. (See page 11 for language of condition.)

9. If project is still under construction, it will be necessary to assure compliance with the additional requirements of the General Counsel memorandum:

    a. Relocation Assistance - Page 8

    b. E.O. 11246 (equal employment opportunity)-page 9

    c. Copeland Act; for contracts and subcontracts awarded subsequent to the date of the reimbursement grant award. Pages 11 & 12

This memorandum has been concurred in by the EPA Office of Audit.

Attachment

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

SUBJECT: Federal Requirements Applicable to the Award of Grant Assistance under Sec. 206 of the 1972 FWPCA Amendments (33 U.S.C. 1286).

DATE: March 28, 1974

FROM: Joseph M. Zorc
Assistant General Counsel, Grants (EG-334)

Joseph M. Zorc

TO: John T. Rhett
Deputy Assistant Administrator
for Water Program Operations (AW-446)

Section 206(a) of the 1972 FWPCA Amendments (33 U.S.C. 1286), as amended on December 28, 1973 by Public Law 93-207 (87 Stat. 906) authorizes reimbursement grants for what may be analyzed as two categories of projects. In the first category are projects previously awarded grant assistance under the former FWPCA, and thereby received previously-required Federal approval, and projects which, while not awarded grant assistance under the former FWPCA, nevertheless were submitted for Federal approval, in order to assure compliance with applicable Federal requirements and to better assure future eligibility for Federal reimbursement; in both cases, projects were reviewed to determine compliance with then-applicable Federal requirements. In the second category are projects which have received no grant assistance under the former FWPCA and were not submitted for review with respect to Federal requirements prior to application for assistance under Sec. 206 of the 1972 FWPCA Amendments.

You have requested us to advise you as to the Federal statutory requirements applicable to the award of assistance to these projects, particularly with reference to the second category mentioned above and the requirement of Sec. 206 that the project must be determined to meet "the requirements of section 8 of this Act in effect at the time of the initiation of construction." We are herewith furnishing our analysis of what we believe to be the applicable Federal requirements as follows: (1) the requirements of Section 8 of the former FWPCA; (2) other requirements of the 1972 FWPCA Amendments; and (3) other Federal requirements.

(A) Requirements of Section 8

Section 206(a) authorizes reimbursement assistance for each project

> ". . . on which construction was initiated after June 30, 1966, but before July 1, 1972, which was approved by the appropriate State water pollution control agency and which the Administrator finds meets the requirements of section 8 of this Act in effect at the time of the initiation of construction . . . ."

For your convenient reference, there is reproduced as an attachment to this memorandum, those statutory provisions which were in effect after June 30, 1966, and before July 1, 1972, except for the several technical amendments which extended the authorization provision of section 8(d) beyond June 30, 1971, pending enactment of the 1972 FWPCA Amendments (P.L. 92-500).

In summary, we have found that there are no differences during this period in the substantive provisions of Section 8 which are relevant to Sec. 206 project review. These requirements are discussed in some detail below.

We have also noted, at p. 33 of the Senate Report which accompanied S. 2770 (S. Rep. 92-414, 92d Cong., 1st Sess.) the statement of intent that EPA must determine that each project for which assistance is requested under Sec. 206 ". . . was designed and constructed in accordance with the requirements of the Act, _and regulations thereunder_, in effect at the time that construction was initiated." (emphasis added). We believe that the prior regulations are applicable, to the extent that they reflect an interpretation of statutory requirements which are otherwise applicable for the purposes of Sec. 206 review. We do not believe that additional administrative requirements set forth in prior regulations must be made applicable -- for example, the industrial cost recovery requirement that related to the non-Federal share of project costs, which was published at 35 F.R. 10757 on July 2, 1970, and codified at 18 CFR §601.34 (January 1, 1971 ed.). Inasmuch as the Section 8 regulations published on June 9, 1972, at 37 F.R. 11650, and codified at 40 CFR §§35.800 _et seq_. (July 1, 1973 ed.) constituted principally a recodification of the Sec. 8 regulations occasioned by the transfer of the regulations from Title 18 to Title 40 of the Code of Federal Regulations, we would suggest that these regulations be utilized to the extent relevant for Sec. 206 project review.

1. Section 8(b)(1)(first phrase): requires that the project must have been approved by the appropriate State water pollution control agency. This provision must be met for all reimbursement grants. We suggest that this requirement be met through certification by the state agency if a copy of the state agency approval cannot be furnished by the applicant. The requirement for prior Federal approval is overriden by Sec. 206, which authorizes reimbursement for projects for which prior Federal approval or assistance has has not been obtained.

2. Section 8(b)(1)(second phrase): requires the project to be included in any "comprehensive program" developed pursuant to Section 3(a) of the Act. This does not refer to "comprehensive plans" under Section 3(c) (support for this can be found not only in the semantics of Section 8, but by reference to Sections 2 and 6(b)(2) of P.L. 660, July 9, 1956, which set forth the identical requirement before Section 3(c) was added by amendment). Similarly, the provision does not refer to State programs developed pursuant to Section 7 of the Act, which are addressed in Section 8(b)(1)(5), discussed below. Very little of the planning contemplated by the subject provision was completed. Compliance with this requirement can be effected by relatively simple intra-agency review to determine whether the project is consistent with §3(a) program requirements, if any, in effect at the time of project initiation.

3. Section 8(b)(1)(2): sets forth the former basic 30% Federal participation limitation. This has no bearing on Sec. 206 project review of reimbursement grant applications, since Sec. 206 authorizes a higher level of Federal assistance (50/55%).

4. Section 8(b)(1)(3): requires each grantee to agree to pay the non-Federal share of the project. We suggest that this requirement can be met either by a statement from the applicant, or other adequate evidence of payment of project costs, in cases where construction has been completed. If construction has not been completed, payment may not be made for the incomplete work pursuant to Sec. 206, and the grantee need only demonstrate that it has made adequate provision to pay its remaining costs.

5. Section 8(b)(1)(4): requires that the grantee make ". . . provision satisfactory to the [Administrator, EPA] for assuring proper and efficient operation and maintenance of the treatment works . . . ." after its completion. For both completed and uncompleted projects, the Agency must assure

provision by the grantee of proper operation and maintenance. One means of accomplishing this would be by means of State assurance that it has found appropriate provision has been made for O&M by the grantee.

6. Section 8(b)(1)(5): requires that the project be "in conformity with" the State water pollution control program submitted pursuant to Section 7 of the former FWPCA, and also requires that the project be ". . . certified by the appropriate State water pollution control agency as entitled to priority over other eligible projects . . . ." The former limitation may be met by a State assurance that the project was, at time of initiation of construction, not inconsistent with the State's Section 7 program. As regards the latter limitation, certification of priority for reimbursement projects would be meaningless and, in fact, violative of the intent of P.L. 93-207; therefore, EPA review need not consider this element.

7. Section 8(b)(1)(6): sets forth the basis of increase in Federal participation to 40% of costs, and has no bearing on Sec. 206 project review of reimbursement grant applications, since Sec. 206 authorizes a higher level of Federal assistance (50/55%).

8. Section 8(b)(1)(7): 50% eligibility (see 3 and 7 above). Note that the State's "agreement to pay" is not required for reimbursement under Section 206.

9. Section 8(c)(first sentence): requires the Administrator to determine for each project the public benefits to be derived therefrom; the propriety of Federal aid to the project; the cost-benefit factor; and the adequacy of provisions made by the grant applicant for proper and efficient post-construction operation and maintenance. Assurance from the State agency would provide a sufficient basis for compliance with this requirement (see also 5 above).

10. Section 8(c)(remainder): concerns allotment formulae, reallotment procedures, and reimbursement under Section 8. This provision has no bearing on project review of reimbursement grant applications under §206.

11. Section 8(d): an authorization of appropriations, having no bearing on project review.

12. Section 8(e): this provision contains a definition of construction which has been carried forward verbatim into 40 CFR 35.860. This definition of construction is applicable to all reimbursement projects under Section 206(a). We are aware that Section 212(1) of the Amendments contains a much broader definition of construction which, according to that section, is for application to all Title II. This provision was so interpreted in floor comments of former Congresswoman Bella Abzug (see A Legislative History of the Water Pollution Control Act Amendments of 1972, 93d Cong., 1st Sess., No. 93-1, p. 372 (hereinafter "Legislative History"). Nevertheless, we believe that the definition of construction contained in Section 8 is controlling. In principles of statutory construction, the specific provision takes preference over the general; Section 206(a) specifically directs one to Section 8 of the Act. Section 212(1) clearly was designed for different purposes, namely, for correlation with the "segmented" construction approach Congress promoted (see Legislative History, p. 294). Legislative history of the Act indicates that Section 206 was intended to be remedial in nature, to correct the inequality which was found between projects funded on different bases. All projects during the period in question - 6/30/66 - 7/1/72 - were guided by the definition of construction in Section 8, and a gross broadening of the scope of reimbursement projects - which would result from adopting the new definition of construction - would appear to be markedly preferential rather than remedial. Neither the statute nor its legislative history indicates that Congress intended for reimbursement projects to suddenly obtain such status. In summary, we believe that the broader definition of construction in the 1972 FWPCA Amendments applies solely to new construction funded under Sec. 201 of the Act, and that the former definition set forth in 40 CFR 35.860 and Section 8(e) of the prior FWPCA is applicable to Sec. 206 assistance.

13. Section 8(f): sets forth the requirements for an increased grant for urban planning. Section 206(a) provides for reimbursement up to 55% of project costs ". . . where the Administrator also determines that such treatment works was constructed in conformity with a comprehensive metropolitan treatment plan as described in Section 8(f) . . . as in effect immediately prior to the date of enactment of the [Amendments] . . . ." As we understand it, arrangements presently exist (including cooperative arrangements with HUD) which will facilitate review for this increased benefit. The same procedures should be observed as have been followed under Section 8.

14. Section 8(g): Davis-Bacon Act requirements. Provides that the Administrator shall ". . . take such action as may be necessary to insure that all laborers and mechanics employed by contractors or subcontractors on projects for which grants are made under this section . . ." shall be paid at least prevailing wage rates. The Secretary of Labor establishes the rates, pursuant to 40 USC 276a *et seq.*, the so-called Davis-Bacon Act. We are informed that the Department of Labor has advised the Agency informally that it will not be feasible to determine prevailing wage rates on "old"work. It appears clear that contracts (or subcontracts) awarded after the date of reimbursement grant award must conform to the requirements of the law. For earlier awards, the agency will generally be unable to determine the prevailing rate; even if the rate was determined, enforcing compliance with the rate would be difficult. We do not believe that this very practical inability to determine retrospective compliance with Section 8(g) should be permitted to slow the reimbursement program; neither do we believe that Congress intended such a result. A distinction may be drawn between the fundamental *purpose* of the Davis-Bacon Act - which case law holds to be protection of employees from substandard wages - and the *method* of achieving that purpose, which was to direct the Secretary of Labor to determine minimum wages for a project based on prevailing rates in the locality. It will generally be impossible to implement the Act's purpose by the Congressionally-selected method; we do not, however, believe this gives the agency authority to dismiss any attempt at achieving the purpose of the Act. We believe that wherever possible, the agency should seek to obtain available evidence regarding whether the grantee's contractors paid the same general level of wages to their employees as was paid to those similarly situated at the time. A written affirmation to that effect, obtained from the grantee and accompanying the grant application, would generally be sufficient to meet the purpose of the Act, given the unusual circumstances.

(B) Other Requirements of the 1972 FWPCA Amendments

There are several requirements in the 1972 FWPCA Amendments, as amended, which are applicable. We note, initially, however, that the requirements of Sec. 201(g) for the application of best practicable waste treatment technology, for the study of alternative waste management techniques, for the application of technology for the reclaiming or recycling of water or otherwise eliminate the discharge of pollutants, and for infiltration analysis, while applicable to assistance under Sec. 201, are not applicable to Sec. 206 grant assistance. The requirements of Section 204 are similarly inapplicable.

1. Section 501(a): issuance of regulations. The regulations promulgated on January 29, 1974 (39 F.R. 3677) provide, at 40 CFR §35.865(b) that "The applicant must furnish such other information as may be required for determination of entitlement or quantum under this Subpart. This affords the basis for obtaining documentation or information required to be furnished.

2. Section 501(c): grantee records. Pursuant to this provision, the grantee is obligated to maintain and furnish records adequate to establish eligibility and prove quantum with respect to a Sec. 206 claim for reimbursement. As an alternative to requiring copies of relevant documents (the construction contract, for example), it would be sufficient to require that the grantee make such records available upon audit; see 4. below.

3. Section 501(d): maintenance of records for audit and examination by EPA or GAO. This pertains to the period of claims processing, and three years after final payment; see Article 2 of the EPA General Grant Conditions, Appendix A to Subchapter B of Title 40 of the Code of Federal Regulations.

4. Section 3 of PL 93-207: audit before final payment. This statutory provision permits interim payments to be made on Sec. 206 claims, but also requires, in conjunction with the Sec. 206 payment mechanism, that an audit be accomplished for each project prior to the final Sec. 206 payment.

5. Section 2 of PL 93-207: statutory limitations date for presentation of Sec. 206 claims. The grant file must contain or refer to adequate evidence of receipt of the Sec. 206 claim on or before January 31, 1974.

(C) Other Federal Requirements

In addition to the requirements of Section 8 and of the 1972 FWPCA Amendments, there are other requirements applicable to all grant awards, by virtue of other legislation and collateral requirements, such as Executive Orders. We have noted that Section 206(a) itself states only that the requirements of Section 8 must be met. However, neither this statement nor the legislative history of the Act provides any basis for construing Section 206(a) as waiving those other requirements which are applicable to Federal grant awards generally (such as the award authority under Section 201(g) or Section 208).

1. NEPA. Section 102 of NEPA (42 U.S.C. 4332) requires an environmental impact study of all ". . . major Federal actions significantly affecting the quality of the human environment . . . ." However, Sec 511(c)(1) of the 1972 FWPCa Amendments provides that "Except for the provision of Federal financial assistance for the purpose of assisting the construction of publicly owned treatment works as authorized by section 201 of this Act, . . . no action of the Administrator taken pursuant to this Act shall be deemed a major Federal action significantly affecting the quality of the human environment within the meaning of the National Environmental Policy Act of 1969 . . . ." Accordingly, NEPA review is not required for reimbursement grants, which are awarded under the separate grant award authorization of Sec. 206 of the Act. We note that NEPA review, if it were required, would be impractical, since there generally are no alternative approaches which are feasible in the case of reimbursement projects the construction of which is either completed or substantially completed. Also, NEPA was enacted after initiation of construction of many of the Sec. 206 projects.

2. Relocation Assistance. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4621 *et seq*.,) prohibits approval of any Federal assistance to any project until the Administrator determines that the policies of the Act will be met (see 40 CFR Part 4 for EPA regulations implementing the Act). The Act requires that certain benefits be made available to businesses and persons displaced by a project after January 1, 1971. Thus, even though a project may have begun in 1967, if persons or businesses were relocated after January 1, 1971, the benefits of the Act must be made available (if, on the other hand, dislocation occurred prior to January 1, 1971 on a project which is not yet complete, no benefits would be available). Implementation of the Act during the remaining periods of uncompleted projects should be accomplished by means of procedures presently used for relocations under construction grants. Implementation of the Act for relocations which occurred after January 1, 1971 without compliance with the Relocation Act, however, may prove troublesome. Reimbursement grantees must be notified of the requirements of the Act, and informed that compliance with the Act is a condition of the grant. One means of obtaining such compliance, where required, could be by requiring the grantee to take all reasonable steps to locate and inform potential relocation assistance recipients, including, where necessary, advertisement in newspapers of wide circulation in the area.

3. The Civil Rights Act of 1964. Title VI of the Civil Rights Act provides that no person shall, on the basis of race, color, or national origin ". . . be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance." (Section 601, 42 USC 2000d). To effect this provision, all reimbursement project applications should be accompanied by the Compliance Report form (EPA Form No.4700-4) developed by EPA's office of civil rights. This will generally be done quite routinely for ongoing projects; for completed projects, the form will develop information on discrimination in service area scope, which is the primary matter of concern. If discrimination is discovered, this office should be consulted as well as the Office of Civil Rights and Urban Affairs, prior to the taking of any action.

4. E.O. 11246 (equal employment opportunity). Section 301 of E.O. 11246 states in pertinent part as follows:

> "Each executive department and agency which administers a program involving Federal financial assistance shall require as a condition for the approval of any grant . . . which may involve a construction contract, that the applicant for Federal assistance undertake and agree to incorporate, or cause to be incorporated, into all construction contracts paid for in whole or in part with funds obtained from the Federal Government . . . or undertaken pursuant to any Federal program involving such grant . . . the provisions prescribed for Government contracts by Section 202 of this Order . . ."

The provisions of E.O. 11246 depend for their efficacy upon contractual implementation. The Order must be implemented for all contracts awarded after the date of award of a reimbursement grant (see EPA's regulations implementing the Order, 40 CFR Part 8). However, the agency need not require revision or modification of contracts which have been awarded prior to the date of grant award. The language of Section 301 of the Order clearly is susceptible of an interpretation which countenances prospective application only (as are the implementing regulations of the Department of Labor; see, e.g., 41 CFR 60-1.4(b)). We are informed by EPA's office of Civil Rights and Urban Affairs that this interpretation is concurred in by the Office of Federal Contract Complaince. In the event additional problems arise with regard to particular contracts under reimbursement grants, it should be noted that the Labor

Department's regulations authorize the Director of the Office of Federal Contract Compliance to ". . . exempt any agency . . . from requiring the inclusion of any or all of the equal opportunity clause . . . when he deems that special circumstances in the national interest so require." 41 CFR 60-1.5(b).

5. Historic preservation. The National Historic Preservation Act of 1966 (16 USC 470 et seq) requires the agency, prior to grant award, to "take into account" the impact of the Federal assisted activity on historical sites and objects included in a National Register developed by the Department of Interior. In addition, the agency must also afford the Advisory Council on Historic Preservation an opportunity to comment on the action. We believe that State review can provide information necessary for review of any situation in which uncompleted construction or site acquisition may affect an historical site. No useful purpose would be served by reviews of historical dislocations which have occurred prior to grant award.

6. Clearinghouse review. Section 204 of the Demonstration Cities and Metropolitan Development Act of 1966 (42 U.S.C. 3334) and the Intergovernmental Cooperation Act of 1968 (42 U.S.C. 4201 et seq), as implemented by OMB Circular A-95, require submission of Federal applications for grants for treatment works construction assistance to certain clearinghouses for review. The purpose of the review is to assure coordination of local, State and Federal planning, and as such the impact is totally prospective. Where construction of a project has already been initiated (as must be the case in order for a project to be eligible for a reimbursement grant) clearinghouse review would serve no useful purpose. It is our opinion, accordingly, that clearinghouse review is not required in the case of Sec. 206 grant awards, except in those cases where such review is required pursuant to State or local law.

7. Flood insurance. Section 102 of the Flood Disaster Protection Act of 1973 (P.L. 93-234) (FDPA) prohibits the approval after March 1, 1974 of any federal financial assistance for acquisition or construction in any flood hazard area in which flood insurance is then available, unless the buildig or personal property to which such assistance relates is covered by flood insurance for its entire useful life, in an amount at least equal to its cost or the maximum limit of coverage available, whichever is less. "Financial assistance

for acquisition or construction purposes" is defined in §3(a)(4) of this Act to include "any form of financial assistance which is in whole or in part for the acquisition, construction, . . . of any . . . building . . ., and for any [personal property] . . . contained or to be contained therein . . . ." "[F]inancial assistance" is also defined to include any form of grant, payment or rebate. §3(a)(3). Accordingly, reimbursement under §206 of the 1972 FWPCA is included in the definition of financial assistance under the Flood Disaster Protection Act. Since the federal financial assistance is in the form of reimbursement of expenditures for acquisition and construction purposes, the FDPA is applicable.

Therefore, the following grant condition must be included in any grant awarded under §206:

> The grantee agrees to acquire and maintain any flood insurance made available to it under the National Flood Insurance Act of 1968, as amended, in an amount at least equal to the total eligible project costs or to the maximum limit of coverage made available under the National Flood Insurance Act of 1968, as amended, whichever is less for the entire useful life of the project. Provided that this condition shall not be applicable if, on the date of grant award, flood insurance was not available pursuant to the Flood Insurance Act of 1968, as amended, for property in the project location or if the property is covered under State policy of self-insurance approved under such Act.

If Sec. 206 grant agreements have already been approved (after March 1, 1974) without this condition, no further grant payment may be made until such condition is incorporated by grant amendment or amendment of the Sec. 206 regulations, or both. Determination of compliance with this condition may be accomplished in conjunction with the Sec. 206 audit.

8. Copeland Act. A portion of the Copeland Act relates to "kickbacks" from public works employees, the inducement of which can have criminal consequences. 18 U.S.C. 874. The remaining provisions of the Act require contractors and subcontractors to submit weekly statements of wages paid to employees. 40 U.S.C. 276c. The statute, and its implementing regulations (29 CFR 3.1 et seq.) are designed to aid in enforcement of the minimum wage provisions of the Davis-Bacon (see discussion under A-14 above). Generally, 40 U.S.C. 276c

will be implementable only for contracts and subcontracts awarded after the date of reimbursement grant award.

CONCLUSION

The foregoing requirements constitute all of the Federal requirements which are applicable, in our opinion, to the award and administration of the Sec. 206 reimbursement grant awards in the second category first mentioned in this memorandum. You should note that the requirements mentioned in Parts (B) and (C), above, are also applicable to the first category of grants, i.e., those where there has been a prior grant award or Federal approval. For example, if a Sec. 8 grant was awarded in 1968 for a project, the Relocation Act procedures would not then have been applicable, since that statute had not yet been enacted; however, the award of Sec. 206 assistance at this time constitutes a Federal action which has the effect of making the Relocation Act applicable to relocations effected after January 1, 1971, even though the Relocation Act had not previously applied to the project. The procedures discussed above would be applicable, but we would expect that such instances would be infrequent.

We would call to your attention, with respect to Sec. 206 award and payment procedures, the following provisions of Sec. 3 of Public Law 93-207 (emphasis added):

> "*** Notwithstanding the provisions of subsection (d) of such section 206, (1) the Administrator is authorized to make interim *payments* to each such project for which an application has been approved on the basis of estimates of maximum pro rata entitlement of all applicants under section 206(a) . . . . *Upon completion* by the Administrator of his audit and approval of *all* projects for which an application has been filed under subsection (a) of such Section 206, the Administrator shall, within the limits of appropriated funds, allocate to each such qualified project the amount remaining, if any, of its total entitlement. *** In no event, however, shall any payments exceed the Federal share of the cost of construction incurred to the date of the voucher covering such payment plus the Federal share of the value of the materials which have been stockpiled in the vicinity of such construction in conformity to plans and specifications for the project."

In the accompanying November 29, 1973 House Report (No. 93-680), there is the following additional comment (emphasis added):

> "*** It has become evident that many eligible recipients would be forced to incur expenses and delays in new projects or risk failure of projects under construction if payments were made only after complete review and determination on all applications. The large number of applications for reimbursement *will require extensive processing* by the Environmental Protection Agency *before full payment* on each can be made. Section 3 of the legislation authorizes preliminary interim reimbursement of funds to projects *which can be easily approved on the basis of available documentation* pending final processing of all projects. This would include *nearly all projects for which there has been any Federal financial assistance in the past*, from the Environmental Protection Agency or other source. This will prevent undue disruption in community plans and also facilitate an orderly cash flow by the United States Government. It is expected that the Environmental Protection Agency will immediately implement the interim payment provisions of this section."

We are aware that EPA is under considerable pressure from Congress, state agencies, and eligible municipalities to expedite Sec. 206 payments. While the agency has no discretion concerning the applicability of Federal requirements discussed in this memorandum, it may be possible to ease the administrative burden of such requirements upon grantees and this agency. We will be pleased to assist in developing alternative procedures, if any are suggested, to facilitate compliance with applicable Federal requirements. In order to accomplish the purposes of Sec. 101(f) of the 1972 FWPCA Amendments, which emphasize a national policy of "drastic minimization of paperwork," we recommend that emphasis should be placed upon record retention by grantees and examination of grantee records upon audit, rather than requiring the submission of copies of documents (such as entire construction contracts), unless such submissions are absolutely required to determine eligibility or *quantum* questions. It may be necessary to defer payment upon projects in the second category until completion of an audit, unless entitlement and *quantum* are adequately demonstrated by the grantee.

PROGRAM REQUIREMENT MEMORANDUM PRM 75-13
Program Guidance Memorandum
PG-32

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SUBJECT: Management of Construction Grants Funds DATE: APR 19 1974

FROM: Alvin L. Alm
Assistant Administrator for Planning and Management AA

Roger Strelow Roger Strelow
Acting Assistant Administrator for Air and Water Programs

TO: Regional Administrators

The purpose of this memorandum is to announce a revision of Agency policy to permit the discretionary use of Title II contract authority for funding grant increases for cost overruns on Section 8 projects, except those projects that are eligible for funding under Section 206 of PL 92-500. This memorandum and the attached documents supersede the following:

- memorandum on Management of Construction Grant Funds from Messrs. Alm and Sansom to Regional Administrators, dated December 7, 1973,
- Office of Resources Management, Policy and Procedure Memorandum #9, dated December 7, 1973, and
- where applicable, opinions of the Office of General Counsel dated November 16, 1972, March 23, 1973, and July 17, 1973.

Revised Legal Opinion

Attachment I is the revised legal opinion which indicates that we now find that Section 4(c) of PL 92-500 provides the discretionary authority to use Title II contract authority to fund grant increases for cost overruns on Section 8 projects not eligible under Section 206. This opinion reverses earlier opinions which found that Title II contract authority could not be used for Section 8 projects and which determined Agency policy as delineated in the December 7, 1973 memoranda cited above.

Revised Policy

Pursuant to this revised legal opinion, we have revised and are hereby issuing Office of Resources Management Policy and Procedures Memorandum #9A (Attachment II).

Discussion of Revised Policy

Since our policy issuance of December 7, 1973, we have been advised by the regions that, in many States, there currently are, or are likely to be, insufficient unobligated 1972 and prior-year funds (including potential recoveries of such funds) to cover all Section 8 project cost overruns. This has resulted in our not being able to provide grant increases to certain projects where bids substantially exceed the estimated costs. In some cases, communities have felt forced to give up their Section 8 grants and reapply under Title II. Also, the regions have reached, or will reach, the point where eligible grant increases for change orders during construction cannot be approved within available 1972 and prior-year funds. The use of Title II contract authority to supplement available 1972 and prior-year funds, as provided in this policy revision, will provide a means to solve these problems.

We wish to emphasize that the intent of this revised policy is that Title II contract authority is available to supplement available 1972 and prior-year funds for cost overruns. Available 1972 and prior-year funds must be used first and before Title II contract authority can be used for Section 8 cost overruns. Also, and equally important, we are continuing our previous policy (see December 7, 1973 memoranda) of maximizing the availability of 1972 and prior-year funds through the recovery of funds where possible, particularly from projects that are not under construction without good justification within two years after the grant award. In short, our policy is to use Title II contract authority only when and where 1972 and prior-year funds are not available or cannot be made available through recoveries. When Title II contract authority is used, it should be taken from the five percent reserve for overruns required under 40 CFR-35.915(g).

Our policy prohibits the use of 1972 and prior-year funds for Title II projects. It also prohibits, on grounds of equity, the use of either Title II contract authority or 1972 and prior-year funds for grant increases for changes in project scope. Such changes in scope should be handled as separate projects--applied for, funded and processed under Title II.

Funding of Section 206 Projects

The legal opinion and our policy prohibits the use of either Title II contract authority or 1972 and prior-year funds for the reimbursement of projects eligible under Section 206 of PL 92-500 since it is clear that Congress intended that such reimbursements should be exclusively funded with monies authorized under and appropriated for Section 206.

We expect project cost overruns (by virtue of change orders) subsequent to January 31, 1974, on active Section 206 projects. The revised policy treats these increases as potential additional demands on Section 206 monies and prohibits the use of either Title II contract authority or 1972 and prior-year funds for grant increases to cover these cost overruns.

Funding of Section 202 Requirements

The revised policy does not permit the use of Title II contract authority to bring grants, eligible under Section 202 of PL 92-500, up to 75 percent Federal funding. Only 1972 and prior-year funds may be used for this purpose. The revised policy does permit, however, the use of either Title II contract authority or 1972 and prior-year funds for grant increases for cost overruns on projects eligible under Section 202. These grant increases must be made at the percentage reached through application of Section 202; that is, either 75 percent or that percentage reached through the application of waivers.

Mixing of 1972 and 1971 Funds

The December 7, 1973 memoranda cited above prohibited the use of 1972 funds on 1971 and prior-year projects. This previous policy is rescinded. Under the revised policy, 1972 and prior-year funds can be used interchangably for grant increases on any Section 8 project except those eligible under Section 206.

Termination of Old Projects

The December 7, 1973 memoranda directed the termination of Section 8 projects which had been in a preconstruction stage for two years or more. This policy remains in effect and is to continue to be implemented. Moreover, projects in the preconstruction stage should be continually monitored; and, when conditions dictate the need for an earlier (than 24 months) termination, this action should be initiated with State concurrence.

Exceptions can be granted to permit some projects to remain in the preconstruction stage in excess of 24 months. Requests for waivers for additional time, based on prudent justifications, must be addressed to the Deputy Assistant Administrator for Water Program Operations and contain revised preconstruction schedules which the Regions will enforce. Grantees under enforcement orders can be expected to be granted reasonable time extensions.

Effective Date

The revised policy and procedures announced herein become effective immediately. These are always open to comment, however. If you should have problems, questions or comments, you may contact Mr. Harold Cahill, Municipal Waste Water Systems Division or Mr. Gary Dietrich, Associate Deputy Assistant Administrator for Resources Management.

Attachments

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

ATTACHMENT I

Apr. 18, 1974

OFFICE OF ENFORCEMENT
AND GENERAL COUNSEL

MEMORANDUM

SUBJECT: Use of Funds Authorized or Appropriated under Section 207 of the 1972 FWPCA Amendments to Fund Overruns on Grants Awarded Under Section 8 of the Former FWPCA

FROM: Alan G. Kirk II signed
Assistant Administrator
for Enforcement and General Counsel (EG-329)

TO: John T. Rhett
Deputy Assistant Administrator
for Water Program Operations (AW-446)

You have requested an opinion on the following question

Question

Does Section 4(c), Federal Water Pollution Control Act Amendments of 1972, authorize use of Title II funds authorized or appropriated under Section 207 to fund grant overruns on Section 8 projects?

Answer

Yes. Section 4(c) of the 1972 FWPCA Amendments permits utilization of 1973 and later contract authority allocations and appropriations thereunder for monetary increases necessary to fund Section 8 grant overruns. However, funding of these increases is not mandatory.

Section 4(c)

Section 4(c) provides:

> "(c) The Federal Water Pollution Control Act as in effect immediately prior to the date of enactment of this Act shall remain applicable to all grants made from funds authorized for the fiscal year ending

> June 30, 1972, and prior fiscal years, including any increases in the monetary amount of any such grant which may be paid from authorizations for fiscal years beginning after June 30, 1972, except as specifically otherwise provided in section 202 of the Federal Water Pollution Control Act as amended by this Act and in subsection (c) of section 3 of this Act."

Section 4(c) originated in Section 4(c) of H.R. 11896: there was no comparable provision in S. 2770.

The March 11, 1972 report (Report No. 92-911, 92d Cong., 2d Sess.) which accompanied H.R. 11896 explained the foregoing provision, which was enacted into law without change from the same provision in H.R. 11896, as follows:

> "Subsection (c) of section 4 provides that the existing Federal Water Pollution Control Act will remain applicable to all grants made from Fiscal year 1972 funds (and prior year funds) including increases in the monetary amount of any such grant which may be paid from fiscal year 1973 funds (or later year funds). An exception to this would be made for the higher cost sharing permitted under section 202 of the Federal Water Pollution Control Act as amended by section 2 of this bill.
>
> "The Committee notes that there may be publicly owned treatment works presently under construction and receiving Federal assistance under section 8 of the existing law where it may be later determined that the Administrator underestimated the eligible costs of construction. Subsection(c) would permit the Administrator to pay the grantee the remaining eligible amount from Fiscal Year 1973 (or later year) funds. However, the payment would be based on the applicable cost-sharing arrangements of section 8 and

> not the higher amounts of section 202. The grants made from fiscal Year 1972 funds being eligible for the higher percentages of section 202 would, of course, not be limited to the amounts specified in section 8 of the existing law."

As we have noted, Section 4(c) was carried forward verbatim into Public Law 92-500, enacted October 18, 1972. The September 28, 1972 Conference Report (Senate Report No. 92-1236) noted, at p. 152, that there had been no comparable provision in the Senate bill, that the conference provision was the same as the House amendment, and summarized the provisions of Section 4(c) as follows:

> "The existing Federal Water Pollution Control Act is made applicable to all grants made from funds authorized for fiscal year 1972 and prior fiscal years, including increases in the monetary amount of any such grant which may be paid from authorizations for fiscal years beginning after June 30, 1972, except as specifically otherwise provided in section 202 of the Federal Water Pollution Control Act and section 3(c) of this Act."

Discussion

Section 4 is titled as a "Savings Provision" in the statute and conference report. Generally, the function of a savings provision is to preserve that which has previously been done or provided for and not to constitute new authority for the expenditure of allocated funds. Section 4(b), which preserves the validity of regulations issued and actions taken under the prior FWPCA, is an example of a typical savings provision.

The principal intent of Section 4(c) is the same as that underlying Section 4(b), namely, to clarify what rules applied to grants awarded under the authority of Section 8. Such provision was particularly necessary because Section 3 of the new statute authorized EPA to make additional grants under Section 8 of the old law after the passage of the new law. Undoubtedly, Section 4(c) was included in the Act to make it clear that grants awarded under the authority of Section 8 through December 31, 1972, would be governed by the requirements of the Section 8 program.

However, section 4(c) contains the phrase: "any increase in the monetary amount of any such grant which may be paid from authorizations for fiscal years beginning after June 30, 1972 . . . ." An examination of the legislative history takes this phrase out of the context of a savings provision, and constitutes, if it is to be given its literal interpretation, authority to divert Title II funds, authorized and appropriated for the principal purpose of making Title II construction grants, to payment of grant overruns on old section 8 projects. (See section 207, FWPCAA.)

We believe a narrow interpretation should be placed upon this phrase, since it appears to be in derogation of the intention of Congress to utilize this fund for new projects. For example, state allocations for Title II funds are based upon needs surveys for new construction and not for funding previously approved construction. To the extent that these funds are used for previously approved construction projects, new projects now on priority lists or requesting listing thereon will be delayed in funding. We note, however, that utilization of Title II contract authority and appropriations is already occurring in those instances where a Section 8 project, which has experienced a substantial overrun, is "split" into two projects to permit funding of a portion of the construction from Title II contract authority.

It is necessary to examine the provisions of Section 206 in further interpreting the intent of Congress in passing Section 4(c). Section 206 was, in our opinion, deliberately designed to be the sole source of reimbursement to Section 8 grantees (and to non-grantees) who proceeded to construction either with grants at a lower percentage than the law then allowed or with no grant at all.

Section 206(e) provides in pertinent part:

> "The authorizations contained in this subsection shall be the sole source of funds for reimbursements authorized by this section."

Section 206(d) provides a system of allocating the Section 206(e) funds among all claimants therefor. Section 206(c) provides that applications for reimbursement under Section 206 may be revised from time to time. Thus Section 206 provides not only for grant increases to raise the percentage of the original grant, but also to fund grant overruns at the higher percentage, all from funds appropriated under Section 206(e) for reimbursement.

Public Law 93-207, passed December 28, 1973, amended Section 206(e) to increase the authorization to $2,600,000 and amended Section 207 to provide that authorizations under Section 207 were not to be used to carry out the provisions of Section 206.

We conclude, therefor, that those grantees eligible for Section 206 reimbursement are limited to recovery of grant overruns from funds allocated for Section 206 reimbursement, and cannot use Section 4(c) as authority to fund those inadequacies caused by limited funding for Section 206 projects.

Therefore, we have determined that

(1) Section 4(c) may be used as authority for funding grant overruns on any Section 8 project which is not eligible for reimbursement under Section 206, but such grant overruns must be funded at the original grant percentage.

(2) Section 4(c) may be used as authority to fund grant overruns on 1972 Fiscal year funded projects, not eligible for Section 206 reimbursement, at 75 percent of the cost of construction, as authorized by Section 202.

(3) The new Title II regulations are not applicable to Section 8 grants, whether or not grant overruns on these projects are funded with Section 207 (Title II) contract authority funds.

(4) EPA may provide programmatic directions to the Regional offices and to state pollution control agencies, to implement this funding option, to the extent that it is deemed necessary or advisable. The statute is silent on the issue of whether the funding of these grant overruns should be given precedence over projects on the Title II priority lists. With EPA approval, a state may elect to fund eligible Section 8 grant overrun claims prior to or in conjunction with any other utilization of FY 73 and later contract authority funds, without amendment to the Title II priority lists.

The funding of these overruns is discretionary, not mandatory, in the following respects. Except as otherwise provided by Section 202, all funding actions under the authority of Section 8 are discretionary, since that statute authorized grant awards not in excess of certain maximum percentages; consequently, if a cost overrun is not funded the effect is to reduce the Federal share of total actual project costs, which is permissible under Section 8. Also, state agency approval is a prerequisite to utilization of state allocations, so that the state agency necessarily has discretion to deny or defer funding of cost overruns in favor of new projects; see 40 CFR SS 35.840(k), 87 F.R. 11663, and 35.915(h), 35.935-11, and 35.955. Finally, timely notice and approval of project changes is a prerequisite to consideration of grant amendments to increase grant amounts; for cost overruns see the previously cited regulations and 40 CFR SS 30.900 and 30.901. Failure to comply with these requirements constitutes a basis for denial of additional Federal assistance.

For these reasons we have determined that Section 4(c) affords discretion to fund Section 8 project grant overruns, but that such funding is not mandatory. Accordingly, to the extent that the determinations set forth in this opinion differ from those set out in opinions of this office on the same subject dated November 16, 1972, March 23, 1973 and July 17, 1973, those earlier opinions are superseded.

cc: Mr. Alvin L. Alm

Attachment II

OFFICE OF RESOURCES MANAGEMENT
POLICY AND PROCEDURE MEMORANDUM #9A

APR 17 1974

MANAGEMENT OF CONSTRUCTION GRANT FUNDS FOR PROJECTS FUNDED UNDER SECTION 8 OF PL 84-660 AS AMENDED

I. Purpose

The purpose of this memorandum is to set forth (1) policies for funding grant increases for cost overruns on Section 8 projects and (2) procedures for recovering funds from previously awarded projects. This memorandum supersedes Policy and Procedure Memorandum #9 issued on December 7, 1973.

II. Definitions

Section 8 projects--projects awarded on and prior to December 31, 1972, under PL 84-660, as amended and those limited number of projects funded under PL 84-660, as amended, after December 31, 1972, with discretionary funds. By definition, these projects exclude Section 206 projects as defined below.

Title II projects--projects awarded after December 31, 1972, under PL 92-500.

Section 206 projects--projects which are eligible for reimbursement under Section 206 of PL 92-500.

Available 1972 and prior-year funds--the prevailing amounts of unobligated funds from 1972 and prior-year appropriations which are issued to a region in an Advice of Allowance and which, therefore, are available for obligation.

Title II contract authority--the prevailing amounts of unobligated contract authority from 1973, 1974 and 1975 authorizations under PL 92-500 (and future authorizations under amendments to PL 92-500) which are issued to a Region in an Advice of Allowance and which, therefore, are available for obligation.

III. Policy

1. Available 1972 and prior-year funds and Title II contract authority may be used to fund grant increases for cost overruns on any and all active Section 8 projects except those eligible for funding

under Section 206 of PL 92-500, provided that:

- all available 1972 and prior-year funds within a State's current allocation are completely used before using Title II contract authority;
- such grant increases are not used to change the scope of the project (changes in scope of Section 8 projects must be treated as separate projects--applied for, processed and funded under Title II; and
- such grant increases are at the same percentage as the original grant.

When using Title II contract authority for Section 8 overruns, the five percent reserve required under 40 CFR-35.915(g) should be used.

2. Available 1972 and prior-year funds may not be used to fund Title II projects or increases thereto.

3. Available 1972 and prior-year funds and Title II contract authority may not be used to fund grant increases of any kind to Section 8 projects eligible for funding under Section 206 of PL 92-500. Only monies authorized under and appropriated for Section 206 may be used to fund grant increases to Section 206 projects, including grant increases for cost overruns to such projects which occur after January 31, 1974.

4. Title II contract authority may not be used to increase grants eligible under Section 202 of PL 92-500 to 75 percent Federal funding. However, available 1972 and prior-year funds may be used for this purpose. Title II contract authority and 1972 and prior-year funds can be used for grant increases for cost overruns on Section 202 projects, but the percentage of the grant increase may not exceed the percentage reached through application of Section 202.

5. Grant awards to all Section 8 projects which have been or will be in a preconstruction stage for more than twenty-four (24) months are to be terminated by the Regional Administrator unless a waiver is requested and approved by the Deputy Assistant Administrator for Water Programs Operations.

6. Funds recovered from the deobligation of awards made in any fiscal year prior to the fiscal year in which the deobligation is made must be first reapportioned by the Office of Management and Budget before they can be and are made available for reobligation. This applies to 1972 and prior-year funds as well as Title II contract authority.

7. All recovered 1972 funds and recovered Title II contract authority will be credited to the allocations of the same States from which the funds are recovered. All recovered 1971 and prior-year funds, except 1964, 1965 and 1966 funds, will be credited to the allowance of the same Region from which such funds are recovered, and the Regional Administrator will have the discretion to determine how these recoveries are credited to the States within his Region. All recovered 1964, 1965 and 1966 funds will revert to the Treasury and will not be reissued to the Regions. At such times in the future, when available 1972 and prior-year funds within a State's allocation exceed its potential needs for cost overruns, these funds will be reallocated to States having cost overrun needs which cannot be satisfied with their available 1972 and prior-year funds.

IV. Procedure for Recoveries

1. At such times as a grant decrease or withdrawal is made against grants awarded in a fiscal year prior to the fiscal year in which the grant decreases or withdrawal occurs, the Regional Financial Management Officer should take appropriate action to deobligate the respective funds and record these deobligations in the financial management information system. This procedure applies to grants awarded with both Title II contract authority and 1972 and prior-year funds.

2. As funds are deobligated, the Regional Financial Management Officer should request their recovery and reissuance by the Budget Operation Division of the Office of Resources Management. This request should verify that the deobligation(s) has been accomplished and properly recorded and should list the amount(s) of each year's funds deobligated from each State(s) so that, when the funds are recovered (reapportioned), they can be reissued to the account of the same State(s). The Regional Administrator has the prerogative of redistributing recoveries of 1971 and prior-year funds (except 1964, 1965 and 1966 funds which revert to the Treasury); therefore, the request need not specify how the recovered funds are to be reissued

to individual State accounts.

3. Upon receipt of requests, the Budget Operations Division will seek reapportionment of the deobligated funds from the Office of Management and Budget. When reapportioned, the Division will reissue the funds in accordance with the specifications of the request.

V. Savings Provisions

From time-to-time, the Office of Resources Management may find it necessary to withhold, withdraw, or place additional constraints or controls on fund allowances issued under the foregoing policies and procedures in order to comply with provisions of authorizing or appropriating legislation, directives of the Office of Management and Budget, or other external requirements.

Richard Redenius
Richard Redenius
Deputy Assistant Administrator
for Resources Management

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

May 10, 1974
PROGRAM REQUIREMENT MEMORANDUM PRM 75-14
PROGRAM GUIDANCE MEMORANDUM
NO. PG-33

SUBJECT: Grant Funds and Project Segmenting

FROM : Harold P. Cahill, Jr., Director
Municipal Construction Division

Harold P Cahill Jr

TO : All Regional Administrators
Attn: Director, Air and Water Programs Division

The passage of P. L. 93-243 enables a construction grant to be awarded to a segment of a project without regard to operability. Regulations implementing this legislation have been included in Title II Regulations, paragraphs 35.930-4 and 35.935-1. The legislation and regulations provide an alternate course of action in those circumstances where the construction of an extremely large project would result in program scheduling difficulty for the State in the management of its total grant program. The provisions should enable a State's program to move ahead when its priority list is being blocked by certain project or projects.

Segmenting prudently administered should prove beneficial to the management of State programs. However, in undertaking the segmenting of a project it is important that both the State and municipality recognize that such a step must be taken within the framework of the law and regulations of which it is a part. It is essential to insure that (a) all grants are awarded at the 75% level. Under no circumstances can a grant be awarded for less than 75% of the eligible cost of the project; (b) the project must be comprised of a discrete and meaningful contract or sub-contract; and (c) the awarding of a grant to a segmented project in no way binds the Federal Government to funding the remaining segment or segments comprising the total project. Moreover, when an applicant undertakes a segment of a project and receives a grant award for that segment, he is committed to the completion of both an operable treatment works and the complete sewage treatment system of which the segment is a part.

Therefore, each construction grant (Step 3 grant) awarded for a segmented project must contain a statement embodying the above and that which is specifically provided for in paragraphs 35.930-4 and 35.935-1 of the Title II Regulations.

The following statement therefore shall be included as a part of any Step 3 construction grant for a segmented project.

> "The grant awarded is for 75% of a segment of a total project. In accepting this award, the grantee agrees to complete the construction of the operable treatment works (see 35.905-15) and complete waste treatment system of which the project is a part (see 35.930-4) and, the grantee further understands and agrees that the Federal Government is not committed to participate in the funding of the remaining part or parts of the operable portion of the system or of the complete system (see 35.935-1)."

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

June 5, 1974

PROGRAM REQUIREMENTS MEMORANDUM PRM 75-17
PROGRAM GUIDANCE MEMORANDUM
PG-36

SUBJECT: Construction of Pretreatment or Treatment Facilities for Municipal Utilities

FROM: Harold P. Cahill, Jr.
Director, Municipal Construction Division
H. P. Cahill J

TO: Regional Administrators
ATTN: Air and Water Program Directors

Questions have been raised regarding the continuation of our practice of awarding grants for sludge handling, pretreatment, and/or overall treatment facilities constructed at municipal water treatment plants--separate from the basic municipal waste water treatment system. This practice, approvable under PL 84-660 (as amended), is inconsistent with the provisions of PL 92-500.

Pretreatment (and treatment) facilities, constructed solely to meet single, special purpose situations, viz., to control pollutants which cannot be handled within the overall municipal system, are not the kind of projects intended for grant assistance under the construction grants program. Such facilities are to be viewed as an integral part of the utility's design and function and their cost, as a capital cost of utility construction. Accordingly, a separate waste water treatment facility, constructed at a municipal utility site, for the sole purpose of treating or pretreating pollutants eminating from that utility, is not to be considered eligible for grant assistance; see 40 CFR 35.925-15.

Therefore, effective July 1, 1974, grants for all such separate facilities cannot be approved. Previously approved grants for projects of this nature are not affected by this decision, nor are Step 3 grants awarded through June 30, 1974.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

September 17, 1974

PROGRAM REQUIREMENTS MEMORANDUM PRM 75-18
PROGRAM GUIDANCE MEMORANDUM
PG-36A

SUBJECT: Eligibility of Wastewater Treatment Facilities at Municipally Owned Water Treatment Works for Construction Grants

FROM: Harold P. Cahill, Jr., Director
Municipal Construction Division (WH-447) H. P. Cahill Jr

TO: Regional Administrators
ATTN: Air and Water Program Directors

Program Guidance Memorandum 36 issued June 5, 1974, gave notice of the termination of the practice of funding wastewater treatment projects at water treatment plants owned by municipalities. Since the issuance of that memorandum, numerous requests have been received for a more detailed explanation of the reasons for this action. To give added support to EPA's position denying the eligibility of municipally owned water treatment works for wastewater treatment grants, we are providing the following. It is to be used as a supplementary attachment to PG-36.

Section 201(g)(1) of PL 92-500 authorizes the Administrator to make grants for the construction of publicly owned treatment works. Section 202(a) of the Act provides that the amount of any grant shall be 75% of one cost of construction of the treatment works and regulations have been promulgated setting forth standards for determining construction costs eligible for grant assistance. In particular, 40 CFR 35.925-15 provides, in part, "That the allowable project costs do not include costs allocable to the treatment for control or removal of pollutants in wastes introduced into the treatment works by industrial users unless the applicant is required to remove such pollutants introduced from non-industrial sources; and that the project is included in a waste treatment system, a principal purpose of which project and system is the treatment of domestic wastes of the entire community, area, region or district concerned."

From the above, it is clear that one test of a project's eligibility for grant funds is that it has, as its principal purpose, the treatment of domestic wastes of the entire community, area, region or district concerned. A municipally owned utility could not meet this funding test.

The wastes generated by municipal water works are generally not similar to wastes introduced into the treatment works by non-industrial sources and, accordingly, special facilities are required in order to properly treat these wastes. Since the treatment of water for human consumption is an industrial undertaking, the water company serving a municipality, whether publicly or privately owned, is in the same position as any other industrial user of a municipal treatment system introducing pollutants into the system which require special treatment equipment so that the wastes will neither impair the system's efficiency nor pass through insufficiently treated. This viewpoint is derived from Sections 402 and 307(b) of the Act which prohibit the discharge of pollutants into a municipal treatment works, which are not susceptible to treatment by such treatment works or, which would interfere with the operation of such treatment works.

Under Section 8 of PL 84-660, grant monies were available to municipalities for the construction of necessary treatment works to prevent the discharge of untreated or inadequately treated sewage or other waste into waterways. Under Section 307 and 402 of the new statute, grant monies are available to treat "usual" wastes expected in treatment works, and special wastes must be removed by the responsible source at its expense.

To allow grant funds to be used to assist the water supply industry could lead to similar requests from a wide variety of other municipally owned facilities such as power plants, airports, mass transportation facilities, feed lots, etc., operated as public utilities. Such action would have the effect of depleting Federal resources intended to support the construction of waste treatment facilities to serve the total municipality.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

January 8, 1975

PROGRAM REQUIREMENTS MEMORANDUM PRM 75-24
PROGRAM GUIDANCE MEMORANDUM
PG NO. 46

SUBJECT: Large City Problem in State Priority Lists

FROM: Harold P. Cahill, Jr., Director
Municipal Construction Division (WH-447) H. P. Cahill Jr

TO: Regional Administrators
Attn: Water Division Directors

Forwarded for information is the General Counsel legal opinion, dated December 13, 1974, which discusses the relationships between population and other factors in the composition of a priority list, especially in regard to large metropolitan areas.

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460
December 13, 1974

MEMORANDUM

SUBJECT: Large City Problem in State Priority Lists

FROM: Alan G. Kirk II /s/
Assistant Administrator for
Enforcement and General Counsel (EG-329)

TO: James L. Agee /s/
Assistant Administrator for
Water and Hazardous Materials (WH-556)

A question has been raised as to what control EPA has to prevent large cities, such as Omaha or Honolulu, from using all or almost all available construction grant funds allocable to a State.

Section 204(a) of the FWPCA requires that the Administrator determine, before awarding any grant for any project, that the project has been "certified by the appropriate State water pollution control agency as entitled to priority over such other works in the State in accordance with any applicable State plan under section 303(e) of this Act." (Section 303(e) relates to a State's obligation with regard to continuing planning).

EPA has promulgated regulations concerning criteria for the preparation by States of its priority lists. These criteria are found at 40 C.F.R. §35.915. Subparagraph (c)(1) of that section states that the State "shall consider the severity of pollution problems, the population affected, the need for preservation of high quality waters, and national priorities..." It is our view that the Administrator may not approve a priority list which does not consider and weigh properly the above criteria so as to produce a priority list which reasonably reflects the needs of the State. Further, the criteria should preclude population alone from controlling a priority list.

Where construction needs of a large metropolitan area impinge unduly upon available funds, consideration should be given to funding only those "segments" of construction which are necessary to insure that construction may proceed in accordance with appropriate priorities.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

PROGRAM REQUIREMENTS MEMORANDUM PRM NO. 75-25
Program Guidance Memorandum PG-49

SUBJECT: Eligibility of Land Acquisition Costs for Land Treatment Processes

FROM: John T. Rhett, Deputy Assistant Administrator /s/
for Water Program Operations (WH-446)

TO: Regional Administrators
ATTN: Water Program Division Directors

This memorandum provides guidance on the interpretation of Section 35.940.3 of the construction grant regulations (40 CFR Part 35) relative to the eligibility of the cost of land that will be an integral part of the treatment process. A later Program Guidance Memorandum will provide guidance on the eligibility of the cost of land for the ultimate disposal of residues.

The cost of land which is an integral part of the treatment process in a system for land treatment of liquid effluents is eligible for Federal grant assistance. Land treatment includes the use of overland flow, rapid infiltration/percolation, or crop irrigation processes. The effluent can be applied to the land by spray irrigation, flood irrigation or ridge and furrow irrigation. The land treatment system shall not have a commonly used outlet or discharge point prior to land treatment.

The cost of land for irregularities in spray patterns, reasonable buffering, berms, dikes, and for similar uses is eligible. While not exclusive, the cost of land for the following uses is not eligible:

1. Sites for placement of buildings, equipment, components, facilities, interceptors or sewage collection systems.

2. Evaporation ponds, waste stabilization lagoons, equalization ponds and ponds for the temporary storage of effluents, treatment by-products, or residues and sludge drying beds.

The facility plan for the land treatment system must include a cost-effectiveness analysis of alternative land treatment sites, as well as alternative technologies.

Grant award or written EPA approval shall be obtained prior to any acquisition of such land in order that such costs will be allowable. The procedures for the independent appraisal and acquisition of land contained in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (P.L. 91-646) 42 USC Section 4651 et seq. shall be followed. The EPA Regulation implementing this statutory requirement is contained in Subpart F of Part 4 of Title 40 of the CFR, 40 CFR Section 4.6000 et seq.

The grantee shall certify to the Regional Administrator that it will comply with 40 CFR Section 30.810 and specifically Section 30.810-4 and Section 30.810-5. The certification will be reflected as an encumbrance in the title to the land. The grantee shall obtain fee simple title to all land acquired with grant assistance, with no encumbrances other than the one protecting the Federal interest.

The above criteria relate solely to the issue of eligibility of land acquisition costs for EPA grant assistance, but are not determinative of actual funding decisions on individual land acquisitions, since the application of statutorily required criteria regarding environmental impact, cost-effectiveness, alternative technologies, available funding, relocation assistance, and other factors may result in a denial of EPA grant assistance for land acquisitions which would otherwise be eligible under the above.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

August 5, 1975

PROGRAM REQUIREMENTS MEMORANDUM PRM NO. 75-29
Program Guidance Memorandum PG-56

SUBJECT: EPA Procedures in Initiating Debarment Actions Against Grantee Contractors

FROM: Alvin L. Alm, Assistant Administrator /s/
for Planning and Management (PM-208)

James L. Agee, Assistant Administrator /s/
for Water and Hazardous Materials (WH-556)

TO: All Regional Administrators

EPA may initiate debarment proceedings against a grantee contractor for:

1. Wage rate violations under the provisions of the Davis Bacon-Act. This Act provides for the use of minimum wage rates determined by the Department of Labor.

2. Equal Employment Opportunity violations. These provisions, set forth in Executive Order 11246, deal with racial, religious, etc., discrimination, as detailed in 40 CFR 8.8 through 8.14.

3. Contract Work, Hours and Safety Standards Act violations. This Act contains overtime provisions.

4. Copeland Act violations. This Act contains anti-kickback provisions. Debarment resulting from violations of the Copeland Act can proceed only after such violations have been established through adjudicatory proceedings.

Upon finding evidence of being notified of significant violations, the Regional Contract Compliance Officer, working in concert with the Regional Counsel, prepares a memorandum citing the particulars of the case including all pertinent evidence. This memorandum, along with recommendations, is then forwarded, under the signature of the Regional Administrator, to the Grants Administration Division, OPM.

The submission is reviewed by both the Compliance Staff and the Office of General Counsel. If, as a result of these reviews, it appears that sufficient justification for debarment exists, the Compliance Staff will notify the Department of Labor of its intent to file for debarment and, concurrently, request an informal reading on the merits of the case. If the Department of Labor indicates that the case has merit, EPA will formally submit charges to the Department and request the initiation of disbarment proceedings.

Department of Labor procedures include an intensive review of the evidence and formal hearings. If debarment is ordered, appeal hearings may be held. General notification of debarment is effected by the General Accounting Office which publishes quarterly, and updates monthly, lists of companies and persons debarred.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

September 8, 1975

PROGRAM REQUIREMENTS MEMORANDUM PRM NO. 75-30
Program Guidance Memorandum PG-57

SUBJECT: Cost Control

FROM: John T. Rhett, Deputy Assistant Administrator /s/
for Water Program Operations (WH-446)

TO: All Regional Administrators
Attn: Director, Water Programs Division

I. Purpose:

This program guidance memorandum provides information on cost control measures to ensure project reviews include full consideration of cost-effectiveness in design.

II. Background:

Under Section 212(2)(B) of the Federal Water Pollution Control Act Amendments of 1972, the grant applicant must demonstrate that the proposed treatment works is the most cost-effective to meet the goals of the Act. The intent of the Act is to make sure that grant funds are properly managed throughout the project.

This requirement of the Act is implemented in Section 35.917(d) and Appendix A of the construction grant regulations. The grant applicant is required to evaluate alternatives and select the most cost-effective (including full consideration of non-quantifiable environmental and social factors). Cost-effectiveness procedures are an integral part of the Step 1 facility planning process and the Step II preparation of plans and specifications.

III. Value Engineering:

To extend the cost-effectiveness effort to all components of the project, as intended by the Act, an interim value engineering (VE) program was introduced in December 1974. The VE methodology is designed to focus on function and value and has been demonstrated to be effective in controlling cost and thereby assuring quality and value design. However, because the present VE program is based on voluntary participation, it can be expected that many projects will not be subjected to such cost review. This means significant resources could be spent with very little benefit as a result of undetected "gold plating". Waste in this nature may seem small in relation to the total project cost, but in terms of the entire construction grant program, it could amount to millions of dollars. In view of this, it is essential that the Regional office review procedures be sensitive to the need for cost-effective design.

IV. Types of high costs to be alert for in construction grant projects:

a. Major unrealistic costs may first appear in the facility planning process. In this case the total cost for the project appears unreasonable and inappropriate for the project scope. For example, a 4 million gallon per day treatment plant, treating primarily domestic sewage to meet secondary treatment at a cost of $20 million would merit further investigation. Similarly, a 20 million gallon per day plant designed to use the extended aeration process should be looked at very closely to be sure all cost-effective alternatives have been considered. By good cost review of the facility plan the project manager can forestall needless expenditure of Step II effort on designs which are not cost-effective and save time in the Step II review process.

b. "Gold plating" costs may appear in the Step II design and are much more difficult to detect. These costs can occur as the Step II design proceeds and include design details which require expensive construction techniques, specification of high cost items which are not cost-effective, and inefficient plant layout, buildings, or hydraulics. Identifying gold plating in a project design requires an experienced reviewer with knowledge of plant design and cost-effective design alternatives. In looking for gold plating in a Step II design, the following points are to be considered.

(1) Plant aesthetics and appearance (landscaping, building finishes) are important features in many locations. While recognizing this importance of aesthetics, it is also necessary that the design solutions to solve aesthetic problems also be cost-effective.

(2) The cost review should concentrate on high cost areas of the project. Extensive cost review effort on minor items with no significant cost impact is a misdirection of effort.

V. Techniques for identifying potential unnecessary high costs:

a. Cost curves. When used carefully, cost curves can be an effective tool for identifying high cost projects and high cost areas within a project.

b. Value Engineering(VE). Value engineering techniques such as cost to worth ratio and functional cost models are a good method to isolate areas with potential for cost control. If the project has already been subject to VE review (see Program Guidance Memorandum 45) then it is likely that gold plating has been removed.

c. Cost models. Cost models have been developed in various VE workshops for individual projects. An example is attached. In the model, two separate costs are provided for each component or system within a project. The higher cost represents estimated design cost and the lower one the worth. Worth is defined as the lowest initial cost to perform the required function. Ideally, the ratios of these two costs should approach 1.0, but in practice it is rarely less than 2.0. When the ratio exceeds about 3.5, excessive cost is probably present. This procedure allows quick determination of possible gold plating areas in the project. Detailed review will confirm whether this is actually the case.

VI. Action to take when potential excessive cost or gold plating is present:

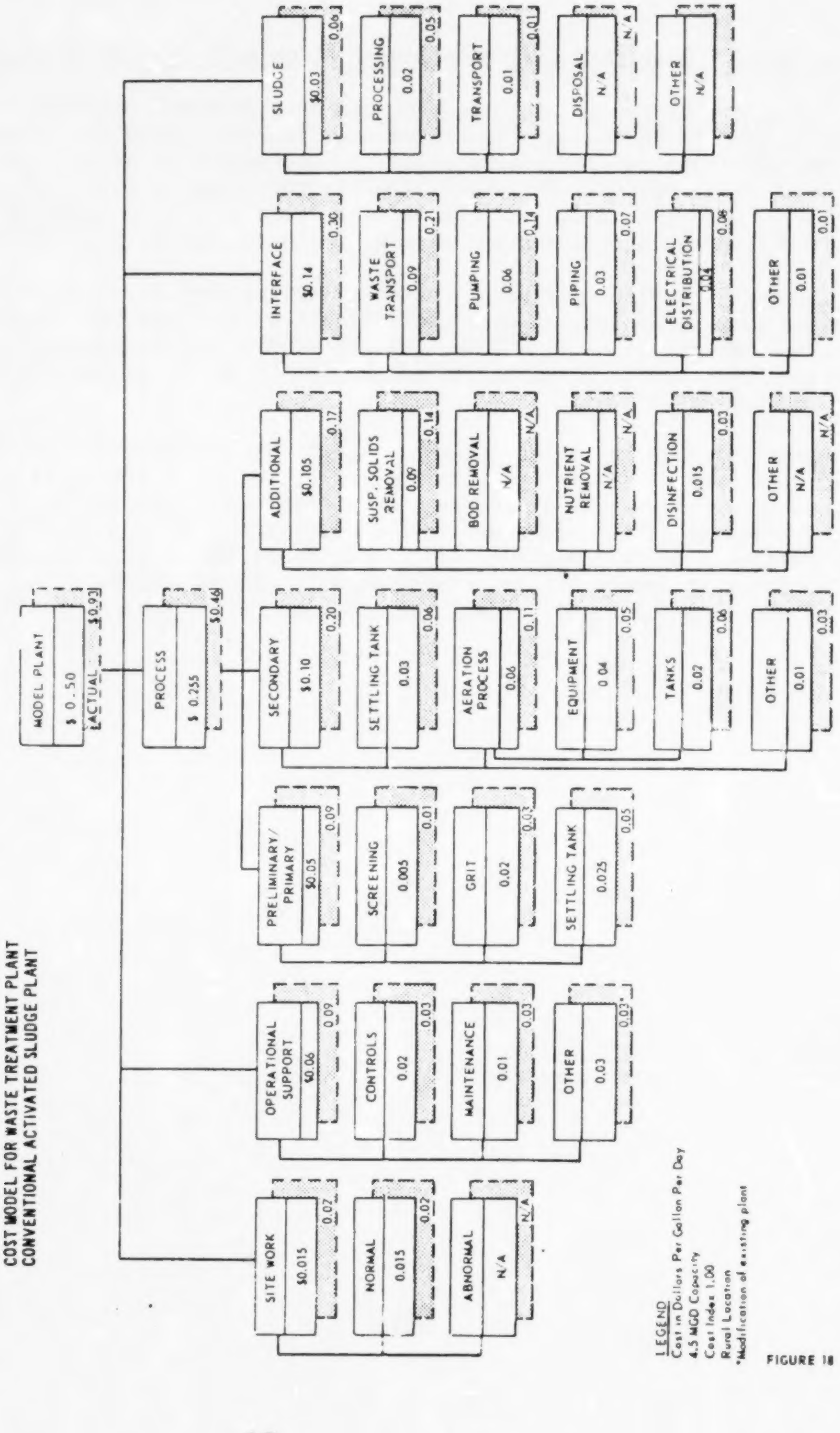
a. Preventive measures. Gold plating can be eliminated when the project is subject to VE review. To ensure that project completion is not delayed, the applicant should be encouraged to incorporate VE at an early stage of the Step II design. This will simplify and speed-up the final review process. Thorough review of the facility plan will also speed-up the Step II review by identifying and eliminating major excess cost items.

b. Value engineering. Although not as efficient when performed on the completed Step II design, VE can identify gold plating and develop more cost-effective alternatives. In-house (EPA) VE studies can be performed or the grant applicant can be requested to accomplish VE on the design as a condition of further grants.

c. Specific requests to the grant applicant. When there are clearly identified excessive costs with significant impact the grant applicant can be requested to develop alternatives or show specific portions of the project are cost-effective. In order to avoid delay this should be initiated either by telephone or by a meeting. It may be found that there is a simple explanation for what appears to be excessive cost. In many cases a conditional grant can be used, subject to reduction of the excessive costs.

Attachment

COST MODEL FOR WASTE TREATMENT PLANT
CONVENTIONAL ACTIVATED SLUDGE PLANT


MODEL PLANT
$ 0.50
ACTUAL
$0.93
PROCESS
$ 0.255
$0.46
SITE WORK
$0.015
0.02
NORMAL
0.015
0.02
ABNORMAL
N/A
N/A
OPERATIONAL SUPPORT
$0.06
0.09
CONTROLS
0.02
0.03
MAINTENANCE
0.01
0.03
OTHER
0.03
0.03*
PRELIMINARY/ PRIMARY
$0.05
0.09
SCREENING
0.005
0.01
GRIT
0.02
0.03
SETTLING TANK
0.025
0.05
SECONDARY
$0.10
0.20
SETTLING TANK
0.03
0.06
AERATION PROCESS
0.06
0.11
EQUIPMENT
0.04
0.05
TANKS
0.02
0.06
OTHER
0.01
0.03
ADDITIONAL
$0.105
0.17
SUSP. SOLIDS REMOVAL
0.09
0.14
BOD REMOVAL
N/A
N/A
NUTRIENT REMOVAL
N/A
N/A
DISINFECTION
0.015
0.03
OTHER
N/A
N/A
INTERFACE
$0.14
0.30
WASTE TRANSPORT
0.09
0.21
PUMPING
0.06
0.14
PIPING
0.03
0.07
ELECTRICAL DISTRIBUTION
0.04
0.08
OTHER
0.01
0.01
SLUDGE
$0.03
0.06
PROCESSING
0.02
0.05
TRANSPORT
0.01
0.01
DISPOSAL
N/A
N/A
OTHER
N/A
N/A

LEGEND
Cost in Dollars Per Gallon Per Day
4.5 MGD Capacity
Cost Index 1.00
Rural Location
*Modification of existing plant

FIGURE 18

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

DEC 29 1975

PROGRAM REQUIREMENTS MEMORANDUM PRM NO. 75-35
Program Guidance Memorandum PG-62

SUBJECT: Allowable Costs for Construction of Treatment Works that Jointly Serve Municipalities and Federal Facilities

FROM: John T. Rhett, Deputy Assistant Administrator for Water Program Operations (WH-546)

John T Rhett

TO: Regional Administrators

ATTN: Water Program Division Directors

I. PURPOSE

A number of questions have arisen on FWPCA grant funding of the construction of municipal treatment works that would jointly serve Federal facilities and municipalities. This memorandum provides guidance on determination of allowable costs of such treatment works and options for payment of the Federal facility portion of construction costs.

II. ALLOWABLE COSTS

Whenever a planned treatment works will jointly serve a municipality and a Federal facility, that portion of construction cost allocable to the Federal facility will not be allowable for 75 percent construction grant funding, subject to the following exceptions:

1. Facility planning (Step 1) costs.
2. Cost of Step 2 work if a Step 2 grant has been certified by the State for funding to EPA prior to the date of this guidance.
3. Design and construction costs allocable to a Federal facility producing less than 250,000 gallons per day or 5 percent of the total design flow of waste treatment works, whichever is less.

That portion of the construction costs allocable to the Federal facility shall be based on all factors which significantly influence the cost of the treatment works. Factors such as strength, volume, and delivery flow rate characteristics will be considered and included to insure a proportional allocation of costs to the Federal facility.

As a minimum, the portion of construction cost allocable to the Federal facility should be based on the ratio of its total hydraulic requirements, including allowances for future needs, to the total design flow of the treatment works. The portion (percentage) allocable to the Federal facility must be agreed upon by the municipality and Federal agency, and approved by EPA prior to award of a Step 2 or Step 3 grant, whichever is applicable, for the works or any portion thereof.

As an example, in a $10,000,000 actual construction project for which the Federal facility share has been agreed upon as 20 percent of the total project cost, the allowable cost and construction grant funding would be as follows:

Total joint project cost	$10,000,000	
Federal facility share	2,000,000	(20%)
Maximum allowable cost	$ 8,000,000	
Grant	0.75	(75%)
EPA grant funding	$ 6,000,000	

III. OPTIONAL PAYMENT ARRANGEMENTS FOR FEDERAL FACILITY COST SHARE

The EPA grantee may negotiate a payment schedule for the Federal facility share with the concerned Federal agency. If payments are not possible on a timely basis, a possible option is for the grantee to finance, through bonds or a bank loan, the Federal facility cost share over an agreed upon number of years and accept periodic payments of principal and interest. Payments would be provided for in 10-year renewable utility contracts which are authorized by the Federal Property and Administrative Services Act. Other payment options may be possible, depending upon the local situation.

IV. COST SHARING ASSURANCES

The EPA grantee should provide assurances satisfactory to EPA as part of the Step 2 grant application (or Step 3 if the Step 2 grant was awarded prior to the effective date of this guidance) that:

1. the Federal facility cost share has been determined as required herein,
2. the Federal facility cost share has been deducted from the grant eligible costs, and
3. funds comprising the local plus Federal facility cost shares will be provided as needed to meet design and construction payment schedules.

I am responding to EPA to assure them that our policies will be revised to rectify the previous misunderstandings, and that the DoD intends to pay for its share of capital costs of joint facilities. I will also ask them to initiate appropriate revisions to 40 CFR 35 to clarify those portions of subpart E that have led to much of our difficulties.

A copy of your implementing guidance should be furnished to this office.

George Marienthal
Deputy Assistant Secretary of Defense
(Environmental Quality)

Enclosure

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY

SUBJECT: DOD Participation in Regional Wastewater Treatment Projects

DATE: 20 JUL

FROM: Harold P. Cahill, Director
Municipal Construction Division (WH-547)

Harold P Cahill

TO: Regional Water Division Directors
Regional Water Branch Chiefs

Note that the attached memorandum on DOD Participation in Regional Wastewater Treatment Projects should be filed with Program Guidance Memorandum No. 62.

Enclosure

ASSISTANT SECRETARY OF DEFENSE
WASHINGTON, D.C. 20301

HEALTH AND
ENVIRONMENT

28 JAN 1976

MEMORANDUM FOR Deputy for Environmental Affairs, OASA(CW)
Special Assistant to ASN(I&L)
Special Assistant for Environmental Quality,
SAF/ILE

SUBJECT: DoD Participation in Regional Wastewater Treatment Projects

In my letter of 23 December 1975, I enclosed a letter from the Office of Management and Budget which forwarded policy guidance on the manner in which the financing for the DoD portion of capital costs of joint projects would be computed and furnished. Essentially, the policy disallows the capital costs attributable to the DoD share when computing the amount of EPA construction grant funding to be provided. This means that the DoD share of joint facilities will be appropriated through normal processes, just as if the installation had gone it alone.

The enclosed letter from EPA indicates that there is guidance to the field that should be modified to reflect the recent OMB decision mentioned above. I am confident that we can resolve many of the present impasses by indicating to regional and municipal representatives our willingness to participate when economically feasible, while pointing out the appropriations time lag and the attendant statutory limitations on the contracting process. Their appreciation of these problems should help all parties to arrive at mutually agreeable solutions.

While I recognize that, in some cases, our share of capital costs has escalated for various reasons to levels far above the estimated cost of constructing DoD treatment facilities, future decisions to participate in joint facilities must be based on sound economic assessments gained through continual participation in the planning processes.

AMERICAN REVOLUTION BICENTENNIAL 1776-1976

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

January 20, 1976

PROGRAM REQUIREMENTS MEMORANDUM PRM NO. 75-36
Program Guidance Memorandum PG 63

SUBJECT: Value Engineering in the EPA Construction Grants Program

FROM: John T. Rhett, Deputy Assistant Administrator
for Water Program Operations (WH-546)

TO: All Regional Administrators
Attn: Director, Water Program Division

I. Purpose

The purpose of this program guidance memorandum is to:

1. Provide interim policy on the use of value engineering (VE) in the EPA construction grant program;

2. Provide the schedule of a mandatory VE program.

3. Update the information on the EPA/VE program contained in PGM No. 45 (December 11, 1974). This program guidance memorandum supersedes PGM No. 45.

II. Policy

1. Value Engineering analysis proposed by a grant applicant is grant eligible when written approval is issued by the Regional Administrator prior to the VE analysis.

2. The grant eligibility of the VE fee is limited to the actual VE analysis of the project. The applicant may incorporate training as part of the proposed VE workshop. However, the intention must be so stated in the proposal, and all costs associated with such training must be computed separately. For example, the cost for a VE instructor, additional time and room space, etc., must be itemized and separately identified for training. These additional costs for training are not grant eligible.

3. The additional engineering fee for any significant redesign to implement an accepted VE recommendation is grant eligible when approved by the Regional Administrator prior to the redesign.

III. VE - Definition

VE is a specialized technique for controlling cost. The technique is based on a systematic and creative approach which incorporates the following key characteristics.

1. VE analysis is performed by a multidisciplinary team of design professionals guided by a VE coordinator;

2. the VE team evaluates cost and function relationships;

3. the VE team identifies and focuses on high cost areas;

4. the VE technique includes a creative session to ensure generation of alternatives;

5. cost savings are accomplished without sacrificing quality or reliability of the project;

6. the VE team makes recommendations to the original designer and owner.

IV. Background

To ensure that the Nation's resources are wisely used, PL 92-500 and the EPA Construction Grant Regulations emphasize the cost-effectiveness approach. However, the existing cost-effectiveness program focuses primarily on the Step 1 grant process. It is essential that cost control be extended whenever it is appropriate and practical to do so.

In 1974, a voluntary VE program was introduced for application in the Step II grant process. As a result, EPA construction grant projects have been subjected to VE analysis under actual grant conditions. Results from these VE projects indicate:

1. VE is effective for cost control in water pollution control projects;

2. cost savings have been substantial in all cases completed to date;

3. project delays can be prevented when the VE program is properly managed;

4. quality and reliability of the project are maintained;

5. VE is beneficial to project designers in terms of more efficient and better design techniques.

In view of the results of the voluntary program, the use of VE should be encouraged and extended to include as many projects as practicable.

V. Procedure

A. Content of the VE proposal

For those projects where a VE analysis will be performed, the applicant must submit for approval through the State to the Regional Administrator, a VE analysis proposal as part of the Step II grant application, or as an add-on where the Step II grant has already been awarded. This proposal should include the following information.

1. Scope of the VE analysis - Normally, the VE analysis should be applicable to all components and systems, including treatment process selection. The only exception is that the legal or regulatory requirements (such as permit discharge limitations) are not to be modified by the VE process. If the applicant wishes to limit the scope, he must so state and provide justification in the proposal.

2. VE team - The applicant should provide brief information on the professional background and experience (with emphasis on VE) of each team member and team coordinator (see section VI).

3. Level of VE effort - Depending on the size and complexity of the project, the VE effort may vary from one team and one review session to multiple teams and/or multiple review sessions in order to adequately review the project. The applicant should propose the appropriate VE effort to meet the need. For example, a large plant with advanced treatment processes may justify the need for two or more VE teams. Similarly, two separate studies may be proposed. The first study would be held when the design stage (Step II) is approximately 20 percent - 30 percent complete to review the treatment process, project design life, plant layout, structural design, hydraulic capacity, etc. The second workshop would be held when the electrical and mechanical systems design is ready to focus on these items. For projects such as a pumping station, interceptors, etc., a small team will normally be adequate.

4. VE fee - The applicant should submit a detailed fee schedule for conducting the VE analysis. The fee schedule should list the man-hour requirements for the recommended level of effort. Manhour unit costs and overhead costs should also be given.

5. Timing - Proper management is the key to preventing project delays. The applicant should carefully schedule the VE analysis so that the VE and the progress design can proceed concurrently. A detailed VE schedule in relation to project design and review should be included in the proposal.

B. VE Summary Reports

1. Preliminary VE report - Upon completion of the VE analysis, a report must be submitted to provide the following information:

- Scope of VE analysis
- Basic VE methodology employed including results for each phase (information, functional analysis, cost model, creativity, analysis of alternatives, and development).
- Summary of VE recommendations
- Estimated cost savings for each recommended alternative

2. Final VE report - A report describing final implementation of the VE recommendations must be submitted. The report is to include:

- Accepted recommendations
- Cost and schedule for implementing the accepted recommendations
- Rejected recommendations and reasons for the rejection
- Net savings for both capital costs and total costs over the planning period

C. EPA Review and Approval

1. VE proposal - In order to prevent any delay, particularly where the VE proposal is a part of Step II grant application, the applicant should make every effort to ensure that adequate information is included in the proposal. When appropriate, the Regional Administrator may condition the grant so that design work can proceed.

2. Implementation of VE recommendations - Upon completion of the VE analysis, recommendations will be submitted by the VE team to the applicant. Normally, the applicant and the project designer will determine how the recommendations can be implemented. Results of such decisions will be submitted to the State and EPA for review. When it is determined that rejection of a VE recommendation is unfounded, the Regional Administrator may, on the basis of cost-effectiveness, request further explanation or reconsideration of the rejected VE recommendation.

VI. VE Team and Qualifications

1. Team Coordinator - In addition to demonstrated technical and managerial capability, the team coordinator must have successfully completed a 40 hour VE workshop conducted by an appropriate organization such as the General Services Administration, the American Institute of Architects, the American Consulting Engineers Council, or an accredited university. In addition to the academic training requirement, some actual VE experience on a construction project will be required. Ideally, two actual VE experiences on a construction project should be a minimum requirement for the VE coordinator. However, such a stringent requirement will not be realistic at this time because VE is still new to most sanitary engineering firms and therefore there may not be sufficient qualified VE coordinators available to meet our needs. In view of this, the Regional Administrator can prior to December 31, 1976, approve the VE coordinator's qualifications based on the academic training requirement only.

2. VE team members - They may or may not have VE background, however, they must be experienced design professionals in their own field. Size and composition of the team varies depending on the type of project to be studied. For a treatment plant, the team may consist of an electrical engineer, a mechanical engineer, a civil/structural engineer, a sanitary engineer and a cost estimator.

3. In-house VE capability - Some large design firms have developed an in-house VE capability. A proposal to use this capability is acceptable, provided the designer certifies that the team members have not actually been involved in any part of the proposed project design except for VE analysis.

VII. VE Workshops and VE Project Review Sessions

1. Project review workshop - Normally, a project review conducted according to the basic VE job plan (information, functional analysis, creativity, evaluation and development) will require approximately 40 hours of team effort. Additionally, pre-workshop preparation and post-workshop followup may take two to four weeks total, depending on project size.

2. Training and actual project review workshop combined - If the applicant wishes to incorporate training in the project workshop, the intent must be stated in the initial proposal and additional costs associated with training must be properly identified and computed separately. Costs for training are not grant eligible. Normally, combined training and review workshops will require more than 40 hours and adequate time must be allocated to project review.

VIII. Mandatory VE Program

In view of the magnitude of the EPA construction grant program, and to ensure that more projects will receive the benefits of VE review, a mandatory VE program based on the following schedule is being developed.

1. After July 1, 1976, a VE proposal will be required in all Step II grant applications with a total estimated project construction cost of $10 million or greater.

2. For those projects where VE would not be mandatory, VE participation is voluntary and is encouraged.

3. The mandatory VE analysis is applicable to Step II grants only (i.e., preparation of plans and specifications).

IX. VE Handbook and References

A Value Engineering Handbook has been prepared and will be made available to Regional Offices for distribution. The Handbook contains information pertaining primarily to how to make a VE proposal for an EPA project. The Handbook does not contain detailed instructions on how to accomplish a VE study. The following references contain that type of information:

Dell'Isola, A.J. Value Engineering in the Construction Industry. 1st Edition. New York. Construction Publishing Co. 1973.

GSA. Design for Value.

GSA. Value Engineering Handbook. PBS P8000.1

GSA. Value Engineering Workbook.

Gage, William L. Value Analysis. New York - McGraw-Hill. 1967.

Martin Company. Value Engineering Program. Book II - Cost Analysis. Self-Study Program. 1963.

Martin Company. Value Engineering Program. Book III - Functional Evaluation. Self-Study Program. 1965.

Martin Company. Value Engineering Program. Book IV - Creativity in Value Engineering. Self-Study Program. 1965.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAR 17 1976

PROGRAM REQUIREMENTS MEMORANDUM PRM NO. 75-37
Program Guidance Memorandum
PG-65

Subject: User Charge System: Plan and Schedule

From: John T. Rhett, Deputy Assistant Administrator for Water Program Operations (WH-546) John T Rhett

To: Regional Administrators
ATTN: Water Division Directors

The purpose of this memorandum is to stress the importance of implementing the regulation which requires the grantee to submit, with his Step 2 application, a plan and schedule for the implementation of his user charge system in sufficient detail to enable the Regional Office to monitor developmental progress and to enforce schedule compliance.

Title II regulations (40 CFR 35.925-11), require the Regional Administrator to determine, at the time of grant approval, that the grantee has developed "...an approvable plan and schedule of implementation..." for a system of user charges. However, a recent GAO study found this requirement to be inconsistently applied. In some cases, implementation schedules submitted by grantees were very brief, and consequently, the Region lacked criteria needed to adequately monitor the grantee's progress. Accordingly, the Comptroller General's report recommended that "...the Agency require the submission of plans and schedules of implementation from the grantees at the time of grant approval in sufficient detail to provide the Agency with enforceable schedules."

Following receipt of this report, a copy of the Comptroller General's letter was sent to the Regional Offices to alert them to the problem. In addition, the section of the Construction Grant Handbook on User Charge Systems was modified to include the following:

> "In the Step 2 application, the applicant must have developed an approvable plan and schedule for the implementation of a user charge system. During the Step 3 grant activity, the applicant must show evidence of carrying out the implementation plan in accordance with that schedule."

In brief, Regions are not to wait until the 50% payment point to insure that "...the grantee has submitted adequate evidence of timely development of its system(s) of user charges." (§35.935-13). The implementation schedule in the Step 2 application should provide for the timely submission of specific documents--such as resolutions of system adoption from the grantee and communities in the project service area, partially or fully drafted user charge systems, sewer use ordinances, etc.--as concrete evidence of implementation progress.

Also, steps should be taken in each Region to remind grantees of a possible "Hold" on payments at the 50% construction point before that point is reached. For example, the grantee's file could be checked when a request for a 30% to 40% payment is submitted to determine if "...evidence of timely development..." has been received. If not, a letter reminding the grantee of the requirement should be included with that 30%-40% payment so to obviate the need for delay at the 50% level.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

APR 2 1976

PROGRAM REQUIREMENTS MEMORANDUM PRM NO. 75-39
Program Guidance Memorandum PG-67

SUBJECT: Eligibility of Land Acquisition Costs for the Ultimate Disposal of Residues from Wastewater Treatment Processes

FROM: John T. Rhett, Deputy Assistant Administrator for Water Program Operations (WH-546) John T Rhett

TO: Regional Administrators

ATTN: Water Division Directors

I. PURPOSE

This memorandum provides guidance on the interpretation of Section 35.940.3 of the construction grant regulations (40 CFR Part 35) relative to the eligibility of the cost of land required for the ultimate disposal of residues resulting from wastewater treatment.

II. BACKGROUND

Program Guidance Memorandum No. 49 covers the eligibility of land acquisition costs for land treatment processes and refers to the future distribution of this guidance on the eligibility of land costs for ultimate disposal of residues.

III. POLICY

A. Allowable Costs

The cost of purchasing land for ultimate disposal of residues from wastewater treatment is allowable for Federal grant assistance. Ultimate disposal of residual wastes from wastewater treatment includes disposal of sludges, ashes, grit or other residues by means of depositing such materials in land fill sites.

Proposals to acquire land for spreading sludge may be approved if the grantee demonstrates to the satisfaction of the Regional Administrator that the primary purpose of the acquisition is disposal of such residues, and disposal by other means set out in B.2.b. of this guidance is less cost-effective or not available.

Any land areas to be purchased for land spreading, except for buffer zones, must be fully utilized for that purpose. Land requirements for the spreading of sludge shall be kept to an absolute minimum determined on the basis of the maximum sludge application rate commensurate with ensuring that ground and surface waters are protected and, in addition for agricultural lands, that cropland resources are protected and harmful contaminants are not accumulated in the human food chain. Land acquisition costs for land areas with application rates below 10 dry tons per acre per year will, in general, not be allowable, although the Regional Administrator may grant a variance for a larger land area (with a lower sludge application rate) on a case-by-case basis where more cost-effective.

The cost of land required for land fill or land spreading, irregularities in spray patterns, reasonable buffering, dikes and drainage ditches for surface runoff control, groundwater protection measures, and similar uses is allowable.

Where a purpose of a project is to improve or reclaim land as well as to dispose of residual wastes, costs may be eligible for an amount not to exceed the cost of the most cost-effective single purpose method of disposal of the residual wastes as determined in accordance with this guidance.

Where land is to be used for disposal of both residues from municipal wastewater treatment and other wastes, only the land cost properly allocable to disposal of municipal wastewater treatment residues is allowable. One example of such cost allocation would be division of costs between municipal waste treatment residues and other municipal solid wastes based on their relative dry weight proportions. If the dry weight of the treatment residues handled at the joint disposal site is less than twenty-five (25) percent of the dry weight of all the wastes to be disposed of in the land fill, no land acquisition costs for treatment residues will be allowed.

While not exclusive, the cost of land for the following uses is not allowable except where such land is also necessary for eligible residual waste management uses as listed above.

1. Sites for placement of buildings, equipment, facilities and sludge conveyance measures including pipelines, and access roads.

2. Sludge storage basins or other temporary storage facilities, sludge drying beds, waste stabilization ponds and evaporation ponds.

The cost of leasing land or of obtaining use of land under contract for residue disposal or utilization is not allowable.

B. Cost Effectiveness Analysis

1. Factors to be Considered

The facility plan for the overall waste treatment system must include a cost-effectiveness analysis of residual waste management alternatives. The choice of a residual waste management method is to be based on comparison of overall waste treatment system alternatives recognizing the close interrelationships between those facilities comprising the residual waste management subsystem and the remainder of the overall waste treatment system.

The residual waste management subsystem includes the facilities, management practices and lands required ultimately to assimilate residual wastes into land or air media, beginning with the grit, raw sludges and other residues obtained directly from wastewater treatment processes. To aid in screening residual waste management subsystems, the costs and non-monetary factors for such subsystems may be compared on a preliminary basis for each wastewater treatment process option. Alternatives which seem feasible on the basis of the preliminary comparison should be analyzed in detail.

The cost-effectiveness analysis of residual waste management options is to include consideration of the following factors, with the amount and level of detail commensurate with local conditions, the number of feasible options available, and the complexity, size and nature of the proposed waste treatment system:

a. Relations of wastewater treatment process option to volume and characteristics of sludges and residues produced.

b. Conditioning, stabilization or pre-application treatment for the disposal or utilization option.

c. Alternatives for landfill or land spreading site location and for conveyance to sites.

d. Sludge storage requirements.

e. Market for free haul or sale of processed sludge and expected net revenues from sales.

f. Option of contract payments for hauling and disposal of processed sludge.

g. Land fill management procedures.

h. Land application method and rates and resultant area required as determined by soils, climate and other site characteristics.

i. Options for obtaining necessary land management rights.

j. Necessary provisions for and costs of relocating persons, households and businesses.

k. Net revenues from sale of crops, forest products and livestock produced by land acquired for sludge application.

l. Environmental effects including impacts on air and water quality and aesthetics.

m. Odor control measures necessary for land fill or land spreading site.

n. Groundwater protection measures.

o. Surface runoff control measures.

p. Other public health measures.

q. Energy requirements and potential recovery facilities.

2. Special Considerations for Land Management Options

a. Arrangements for land management must be made to assure operation over at least a 10 year period, but ordinarily not more than 20 years, to protect investments in facilities and equipment for disposal or utilization of residual wastes.

b. The following alternatives must be considered prior to recommending outright purchase of land for land spreading of sludge or other residues:

- Sale or free haul of processed sludge or residues for use by others.
- Contractual payment for hauling processed sludge or residues for use by others.
- Contract with landowners for rights to develop land spreading site and to apply sludges, preferably with either or both tasks to be performed by owners.
- Leasing of land spreading site, preferably providing for site development or operations by owners.
- Land fill

c. The cost-effectiveness analysis should give special attention to the alternatives of sale, free-haul or contractual payment to haul which result in beneficial uses of sludge. These alternatives help achieve the wastewater treatment objectives without requiring the treatment authority to undertake a major program of land acquisition, management and utilization.

C. Land Acquisition Requirements

Grant award or written EPA approval shall be obtained prior to any acquisition of land for residual waste management in order that such costs will be allowable. The procedures for the independent appraisal and acquisition of land contained in the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (P.L. 91-646) 42 USC Section 4651 et. sq. shall be followed. The EPA Regulation implementing this statutory requirement is contained in Subpart F of Part 4 of Title 40 of the CFR, Section 4.60000 et. seq.

The grantee shall certify to the Regional Administrator that it will comply with 40 CFR Section 30.810 and specifically Section 30.810 and Section 30.810-5. The certification will be reflected as an encumbrance in the title of the land. The grantee shall obtain fee simple title to all land acquired with grant assistance, with no encumbrances other than the one protecting the Federal interest.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

AUG 16 1976

PROGRAM REQUIREMENTS MEMORANDUM
PRM #76-5

SUBJECT: Flood Insurance Requirements

FROM: Deputy Assistant Administrator
for Water Program Operations

John T Rhett

TO: Regional Administrators
ATTN: Water Division Directors

PURPOSE:

This Program Requirements Memorandum summarizes National Flood Insurance Program requirements applicable to the construction grants program. It supersedes Program Guidance Memoranda 25, 25A and 54.

DISCUSSION:

The National Flood Insurance Act of 1968 (42 U.S.C. 4001-4127) as expanded and amended by the Flood Disaster Protection Act of 1973 (P.L. 93-234) provides for low cost flood insurance for projects in flood-prone areas through the means of a subsidy. A prerequisite for this assistance is the enactment by local jurisdictions of certain minimum flood plain management measures to reduce or avoid future flood damage within their flood-prone areas. When adequate flood plain management measures have been adopted and approved by the Department of Housing and Urban Development, HUD announces the community's eligibility for the sale of flood insurance and the community is then participating in the program.

The HUD Mandatory Purchase of Flood Insurance Guidelines were printed in the Federal Register on July 17, 1974 (39 FR 26186-93), and were supplemented on April 14, 1975, (40 FR 16710).

POLICY:

The Act requires local jurisdictions encompassing designated special flood hazard areas to participate in the program and purchase flood insurance as a condition of receiving any form of Federal or Federally-related assistance for construction purposes or for the acquisition of any real or non-expendable personal property in an identified special flood hazard area if the total cost of such activities is $10,000 per structure or more. Each community has until one year after notification of identification as a flood-prone community to enter the flood insurance program (i.e., become a "participating" or "eligible" community) or become ineligible for any Federal financial assistance for acquisition or construction in the flood hazard area.

A community which has not entered the flood insurance program within one year after notification of flood-prone status will be ineligible to receive a Step 3 grant until it does enter the program if the insurable portion of the proposed project is in a designated flood hazard area.

Communities which have not yet been surveyed for flood-prone status, or which have been surveyed but were notified of flood-prone status less than a year before, do not have to be participating in the flood insurance program to obtain a Step 3 grant. Upon completion of the year after the notification, however, each community in this latter category must participate in the flood insurance program prior to obtaining any further grants for construction in flood hazard areas.

Grants may be awarded to non-participating communities where the project is outside a designated area.

Where the prospective grantee is a "participating" community but the grant would include the construction of an insurable facility in a designated area of a non-participating neighboring jurisdiction (and more than a year has elapsed since identification of the flood hazard area) the failure of the neighboring jurisdiction to participate in flood insurance prevents the award of the grant.

IMPLEMENTING PROCEDURE:

A. Insurance Requirements

Environmental Protection Agency grant regulations and procedures, 40 CFR 30.405-10, (40 FR 20232, May 8, 1975), require that the grantee or the construction contractor (whichever party or parties has insurable interest) must acquire any flood insurance made available to it under the National Flood Insurance Act of 1968, as amended, if the value of insurable improvements is $10,000 per structure or more. Such insurance must be purchased beginning with the period of construction and maintained for the entire useful life of the project. HUD has interpreted the statute as providing insurance only for grant projects involving a new or reconstructed surface structure which is walled and roofed.

The amount of insurance required is the total project cost, excluding facilities which are uninsurable under the National Flood Insurance Program such as bridges, dams, water and sewer lines (above or below ground) and underground structures and excluding the cost of the land, or the maximum limit of coverage made available to the grantee under the National Flood Insurance Act, whichever is less. The present maximum limit for non-residential structures is $200,000 on the structure and $200,000 on contents.

The grantee must certify, along with the first payment request involving reimbursement for insurable construction, that he has purchased the required flood insurance. The evidence of such insurance must be available at all times for submission to the Project Officer on request or for review in the grantee's offices.

Flood insurance is required for buildings during the course of construction as well as for building materials or equipment stored in a fully-enclosed structure adjacent to the building site, if the materials or equipment are scheduled to be incorporated into structures which are eligible for insurance. The amount of flood insurance required at any given time need not exceed the amount of the grantee's total disbursement for insurable construction to date. While underground structures are not insurable, foundations and footings of a structure which is primarily above-ground are insurable and are subject to the insurance purchase requirement since they are the initial stages of construction of the above-ground portions of the structure.

If a Step 3 grant is made to a grantee which has previously been assisted with respect to the same facility, the grantee must purchase flood insurance on the previously assisted facility as well as on the new construction. The amount of flood insurance required should be based upon its current value, however, and not on the amount of assistance previously provided.

Flood proofing does not eliminate nor reduce the requirement for program participation or insurance but could affect the rate charged for insurance.

The required insurance premium for the period of construction is an allowable project cost.

B. List of Communities Ineligible for Step 3 Grants

A cumulative list of ineligible communities (i.e. those which were designated as flood-prone a year or more before but have not met the above requirement and are therefore prohibited from receiving a Step 3 grant for projects in designated flood hazard areas) is published during the first week in each month by HUD in the Federal Register under the title "National Flood Insurance Program, Flood-prone Areas of Communities

Subject to July 1, 1975, Prohibition of Federal and Federally-Related Assistance." This list will also contain the names of the communities that face a qualification deadline sometime during that month. In addition, an updated listing will be published on a weekly basis removing the names of those communities that have subsequently qualified.

In addition, each Regional Office receives HUD's book-size monthly list of communities participating, suspended, withdrawn and not participating (with flood hazard area identified) in the program. The Regional Office may request HUD/FIA Washington to place additional names on the mailing list for this publication if more copies are needed.

C. Regional Office Responsibilities

The Regional Office shall discuss flood insurance requirements with all grant applicants at the pre-application conference. It should be stressed that non-participating communities which have been designated flood-prone for a year or more under the Flood Disaster Protection Act will not be able to receive Step 3 grant assistance for a project in the designated flood-prone area until they have entered the flood insurance program, and that to qualify they must develop flood plain management strategies in compliance with HUD guidelines as set forth in Title 24 of the Code of Federal Regulations, Chapter 10, Subchapter B, commencing at Part 1909. They will, however, be able to receive grant funds for Steps 1 and 2 without such participation.

Each region has the responsibility to make each community with a Step 1 or Step 2 grant aware of the National Flood Insurance Program and its requirements relative to Step 3 grant assistance.

Before awarding any Step 3 grant, the region shall check the most current list of ineligible communities and communities about to become ineligible to determine if the applicant or grant project is among them.

D. Environmental Impact of Projects on Flood Plains

The environmental impact of projects on flood plains should be analyzed in accordance with other facility planning guidance.

E. Sources of Maps and Other Program Information

Flood hazard areas are shown on Flood Hazard Boundary Maps or Flood Insurance Rate Maps issued by HUD at intervals. These maps are maintained on file within each eligible community in a repository designated by the chief executive officer. Maps, literature and policy application forms and manuals are available from any National Flood Insurers Association servicing company. HUD Regional Flood Insurance Specialists are located in each HUD Regional Office and should be utilized by EPA personnel to answer questions relating directly to the operation of the flood insurance program. Addresses of HUD Regional Flood Insurance Specialists and State Coordination Agencies for Flood Insurance are attached as a portion of the EPA Grants Information Guide, National Flood Insurance Program. If these sources cannot assist, contact the Federal Insurance Administration, HUD, Washington, D.C. 20410, 202-755-5581 or toll free 800-424-8872 or 8873.

F. Assistance From Headquarters

Any questions on the application of the policy to specific projects should be referred to the Facility Requirements Branch, (202-426-9404), Office of Water Program Operations or to the Grants Policy and Procedures Branch (202-755-0860), Grants Administration Division, OPM.

Attachment

REFERENCES:

The National Flood Insurance Act of 1968 (42 U.S.C. 4001-4127)
The Flood Disaster Protection Act of 1973 (PL 93-234)
HUD Mandatory Purchase of Flood Insurance Guidelines, 1974, (39 FR 26186-93), (40 FR-16710)
EPA Grant Regulations and Procedures (40 FR 20232, May 8, 1975) (40 CFR 30.405-10)
National Flood Insurance Program, Flood Prone Areas of Communities Federal Register-Monthly
Title 24, CFR, Chapter 10, Subchapter B, 1909-

U.S. ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460
GRANTS ADMINISTRATION DIVISION
GRANTS INFORMATION GUIDE

NATIONAL FLOOD INSURANCE PROGRAM

General

The National Flood Insurance Program is a Federally-subsidized program authorized by the National Flood Insurance Act of 1968 (42 U.S.C. 4001-4127) to protect property owners who previously had been unable to get coverage through the private insurance industry. It is administered by the Federal Insurance Administration, Department of Housing and Urban Development. The program, for the first time, made flood insurance available to individuals at affordable rates. In return for the Federal subsidy, State and local governments are required to adopt certain minimum floodplain management measures to reduce or avoid future flood damage within their floodprone areas.

The Flood Disaster Protection Act of 1973 (P.L. 93-234, December 31, 1973) greatly expanded the available limits of flood insurance coverage and imposed additional requirements on property owners and communities.

The Act required the purchase of flood insurance on and after March 2, 1974, as a condition of receiving any form of Federal or Federally-related assistance for construction purposes or for the acquisition of any real or nonexpendable personal property in an identified special flood hazard area that is located within any community currently participating in the National Flood Insurance Program. A "participating community," also known as an "eligible community," is a community in which the Federal Insurance Administration has authorized the sale of flood insurance under the National Flood Insurance Program.

For any community that was not participating in the program at the time the assistance was approved, the statutory requirement for the purchase of flood insurance did not apply. However, beginning July 1, 1975, or one year after notification of identification as a flood-prone community, whichever is later, the requirement applies to all identified special flood hazard areas within the United States, which have been delineated on Flood Hazard Boundary Maps or Flood Insurance Rate Maps issued by the Department of Housing and Urban Development. Thereafter, no EPA financial assistance can legally be approved for real or nonexpendable personal property or for construction purposes in these areas unless the community has entered the program and flood insurance is purchased.

Regulations

HUD regulations governing the National Flood Insurance Program are set forth in Title 24 of the Code of Federal Regulations, Chapter 10, Subchapter B, commencing at Part 1909.

Supersedes information sheet
dated August 8, 1974

Issue Date: July 1, 1975
Grants Information Branch (PM216)

The final EPA general grant regulations published on the Federal Register on May 8, 1974, include the requirements for the purchase of flood insurance as a condition of EPA assistance (40 CFR 30.405-10.)

EPA Grantee Requirements

1. Wastewater treatment construction grants.

The grantee or the construction contractor, as appropriate, must acquire flood insurance made available to it under the National Flood Insurance Act of 1968, as amended, beginning with the period of construction and maintain such insurance for the entire useful life of the project if the total value of insurable improvements is $10,000 or more. The amount of insurance required is the total project cost, excluding facilities which are uninsurable under the National Flood Insurance Program and excluding the cost of the land, or the maximum limit of coverage made available to the grantee under the National Flood Insurance Act, whichever is less. The required insurance premium for the period of construction is an allowable project cost.

2. Other grant programs.

The grantee must acquire and maintain any flood insurance made available to it under the National Flood Insurance Act of 1968, as amended, if the approved project includes (a) any incidental construction-type activity, or (b) any acquisition of real or nonexpendable personal property, and the total cost of such activities and acquisitions is $10,000 or more. The amount of insurance required is the total cost of any insurable, nonexpendable personal or real property acquired, improved, or constructed, excluding the cost of land, as a direct cost under the grant, or the maximum limit of coverage made available to the grantee under the National Flood Insurance Act, as amended, whichever is less, for the entire useful life of the property. The required insurance premium for the period of project support is an allowable project cost.

If EPA provides financial assistance for nonexpendable personal property to a grantee that the Agency has previously assisted with respect to real estate at the same facility in the same location, EPA must require flood insurance on the previously-assisted building as well as on the personal property. The amount of flood insurance required on the building should be based upon its current value, however, and not on the amount of assistance previously provided.

Sources of insurance policies, maps, and program information

1. Insurance policies under the National Flood Insurance Program can be obtained from any licensed property insurance agent or broker serving the eligible community, or from the National Flood Insurers Association (NFIA) servicing company for the State. A current listing of servicing companies is enclosed.

Reproduced from best available copy.

2. Flood Hazard Boundary Maps are the first maps prepared in the identification process. These indicate the locations of identified special flood hazard areas and are always maintained on file within each eligible (participating) community in a repository designated by the mayor or chief executive officer, usually the building inspector's office or the city clerk's office. The address of such repository is published at 24 CFR 1914 and is amended regularly in the Federal Register. The Flood Insurance Rate Maps are issued later following a detailed study of the flood hazard area. These maps delineate degrees of flood hazard and include more precise area identification.

3. Maps, literature, and policy application forms and manuals are available for distribution from any NFIA servicing company. The servicing companies are also equipped to answer questions on eligibility of communities, scope of coverage, and maximum amounts of insurance available with respect to particular types of buildings.

4. Questions that cannot be answered by individual agents or brokers or by the appropriate servicing company may be referred to the National Flood Insurers Association, 1755 Jefferson Davis Highway, Alexandria, Va., 22202, telephone 703-920-2070; to the flood insurance representative at the nearest HUD regional office (list enclosed); or to the Federal Insurance Administration, HUD, Washington, D.C. 20410, 202-755-5581, or toll free 800-424-8872 (8873).

5. Communities may obtain assistance from the appropriate State Coordinating Agency in adopting the required flood plain management regulations and qualifying for the program. A list of the State Coordinating Agencies is also attached.

6. Copies of statutes, program regulations, and community eligibility application forms may be obtained from HUD regional offices or directly from the Federal Insurance Administration in Washington, D. C.

Department of Housing And Urban Development
REGIONAL FLOOD INSURANCE SPECIALISTS

REGION I
John F. Kennedy Federal Building
Room 405A
Boston, Massachusetts 02203
Telephone: (617) 223-2616 or 2709
(For Connecticut, Maine, Massachusetts,
New Hampshire, Rhode Island, Vermont)

REGION II
26 Federal Plaza
New York, New York 10007
Telephone: (212) 264-4756 or 8021
(For New Jersey, New York,
Puerto Rico)

REGION III
Curtis Building
Sixth and Walnut Streets
Philadelphia, Pennsylvania 19106
Telephone: (215) 597-9581
(For Delaware, District of Columbia,
Maryland, Pennsylvania, Virginia,
West Virginia)

REGION IV
1371 Peachtree Street, N.E.
Atlanta, Georgia 30309
Telephone: (404) 526-2391
(For Alabama, Florida, Georgia,
Kentucky, Mississippi, North
Carolina, South Carolina, Tennessee)

REGION V
300 South Wacker Drive
Chicago, Illinois 60606
Telephone: (312) 353-0757
(For Illinois, Indiana, Michigan,
Minnesota, Ohio, Wisconsin)

REGION VI
New Federal Building
1100 Commerce Street
Dallas, Texas 75202
Telephone: (214) 749-7412
(For Arkansas, Louisiana, New
Mexico, Oklahoma, Texas)

REGION VII
Federal Office Building
911 Walnut Street
Kansas City, Missouri 64106
Telephone: (816) 374-2161
(For Iowa, Kansas, Missouri,
Nebraska)

REGION VIII
Federal Building
1961 Stout Street
Denver, Colorado 80202
Telephone: (303) 837-2347
(For Colorado, Montana, North
Dakota, South Dakota, Utah,
Wyoming)

REGION IX
450 Golden-Gate Avenue
P. O. Box 36003
San Francisco, California 94102
Telephone: pending
(For Arizona, California, Hawaii,
Nevada)

REGION X
Room 3068 Arcade Plaza Building
1321 Second Avenue
Seattle, Washington 98101
Telephone: (206) 442-1026
(For Alaska, Idaho, Oregon,
Washington)

Department of Housing And Urban Development
STATE COORDINATING AGENCIES FOR FLOOD INSURANCE

ALABAMA
Alabama Development Office
Office of State Planning
State Office Building
501 Dexter Avenue
Montgomery, Alabama 36104

ALASKA
Department of Community and
Regional Affairs
Division of Community Planning
Pouch B
Juneau, Alaska 99811

ARIZONA
Arizona State Land Department
1624 W. Adams, Room 400
Phoenix, Arizona 85007

ARKANSAS
Division of Soil and Water
Resources
State Department of Commerce
1920 West Capitol Avenue
Little Rock, Arkansas 72201

CALIFORNIA
Department of Water Resources
Post Office Box 388
Sacramento, California 95802

COLORADO
Colorado Water Conservation Board
Room 102
1845 Sherman Street
Denver, Colorado 80203

CONNECTICUT
Department of Environmental
Protection
Division of Water and Related
Resources
Room 207, State Office Building
Hartford, Connecticut 06115

DELAWARE
Division of Soil and Water
Conservation
Department of Natural Resources
and Environmental Control
Tatnall Building, Capitol
Dover, Delaware 19901

FLORIDA
Department of Community Affairs
2571 Executive Center Circle East
Howard Building
Tallahassee, Florida 32301

GEORGIA
Department of Natural Resources
Office of Planning and Research
270 Washington Street, S. W. Rm. 707
Atlanta, Georgia 30334

HAWAII
Division of Water and Land
Development
Department of Land and Natural
Resources
P. O. Box 373
Honolulu, Hawaii 96809

IDAHO
Department of Water Administration
State House - Annex 2
Boise, Idaho 83707

ILLINOIS
Governor's Task Force on Flood
Control
300 North State St.
P. O. Box 475, Rm. 1010
Chicago, Illinois 60610

INDIANA
Division of Water
Department of Natural Resources
608 State Office Building
Indianapolis, Indiana 46204

IOWA
Iowa Natural Resources Council
James W. Grimes Building
Des Moines, Iowa 50319

KANSAS
Division of Water Resources
State Department of Agriculture
State Office Building
Topeka, Kansas 66612

KENTUCKY
Division of Water
Kentucky Department of Natural
Resources
Capitol Plaza Office Tower
Frankfort, Kentucky 40601

LOUISIANA
State Department of Public Works
P. O. Box 44155
Capitol Station
Baton Rouge, Louisiana 70804

MAINE
Office of Civil Emergency
Preparedness
State House
Augusta, Maine 04330

MARYLAND
Department of Natural Resources
Water Resources Division
State Office Building
Annapolis, Maryland 21401

MASSACHUSETTS
Division of Water Resources
Water Resources Commission
State Office Building
100 Cambridge Street
Boston, Massachusetts 02202

MICHIGAN
Water Resources Commission
Bureau of Water Management
Stevens T. Mason Building
Lansing, Michigan 48926

MINNESOTA
Division of Waters, Soils and
Minerals
Department of Natural Resources
Centennial Office Building
St. Paul, Minnesota 55101

MISSISSIPPI
Mississippi Research and Development Center
P. O. Drawer 2470
Jackson, Mississippi 39205

MISSOURI
Department of Natural Resources
Division of Program and Policy
Development
State of Missouri
308 East High Street
Jefferson, Missouri 65101

MONTANA
Montana Dept. of Natural Resources
and Conservation
Water Resources Division
32 South Ewing Street
Helena, Montana 59601

NEBRASKA
Nebraska Natural Resources
Commission
Terminal Building, 7th Floor
Lincoln, Nebraska 68508

NEVADA
Division of Water Resources
Department of Conservation
and Natural Resources
Nye Building
Carson City, Nevada 89701

NEW HAMPSHIRE
Office of Comprehensive Planning
Division of Community Planning
State House Annex
Concord, New Hampshire 03301

NEW JERSEY
Bureau of Water Control
Department of Environmental
Protection
P. O, Box 1390
Trenton, New Jersey 08625

NEW MEXICO
State Engineer's Office
Bataan Memorial Building
Santa Fe, New Mexico 87501

NEW YORK
New York State Department of
Environmental Conservation
Division of Resources Management
Services
Bureau of Water Management
Albany, New York 12201

NORTH CAROLINA
Division of Community Assistance
Department of Natural &
Economic Resources
P. O. Box 27687
Raleigh, North Carolina 27611

NORTH DAKOTA
State Water Commission
State Office Building
900 E. Boulevard
Bismarck, North Dakota 58501

OHIO
Ohio Dept. of Natural Resources
Flood Insurance Coor. Building
Fountain Square
Columbus, Ohio 43224

OKLAHOMA
Oklahoma Water Resources Board
2241 Northwest Fortieth Street
Oklahoma City, Oklahoma 73112

OREGON
Executive Department
State of Oregon
Salem, Oregon 97310

PENNSYLVANIA
Department of Community Affairs
Commonwealth of Pennsylvania
Harrisburg, Pennsylvania 17120

PUERTO RICO
Puerto Rico Planning Board
1570 Ponce de Leon Avenue
Stop 22
Santurce, Puerto Rico 00908

RHODE ISLAND
R. I. Statewide Planning Program
265 Melrose Street
Providence, Rhode Island 02907

SOUTH CAROLINA
South Carolina Water Resources
Commission
P. O. Box 4515
Columbia, South Carolina 29240

SOUTH DAKOTA
State Planning Bureau
Office of Executive Management
State Capitol
Pierre, South Dakota 57501

TENNESSEE
Tennessee State Planning Office
660 Capitol Hill Building
Nashville, Tennessee 37219

TEXAS
Texas Water Development Board
P. O. Box 13087
Capitol Station
Austin, Texas 78711

UTAH
Department of Natural Resources
Division of Water Resources
State Capitol Building, Rm. 435
Salt Lake City, Utah 84114

VERMONT
Management & Engineering Division
Water Resources Department
State Office Building
Montpellier, Vermont 05602

VIRGINIA
Bureau of Water Control
Management
State Water Control Board
Post Office Box 11143
Richmond, Virginia 23230

WASHINGTON
Department of Ecology
Olympia, Washington 98501

WEST VIRGINIA
Office of Federal-State Relations
Division of Planning & Development
Capitol Building, Rm. 150
Charleston, West Virginia 25305

WISCONSIN
Department of Natural Resources
P. O. Box 450
Madison, Wisconsin 53701

WYOMING
Wyoming Disaster and Civil
Defense Agency
P. O. Box 1709
Cheyenne, Wyoming 82001

Department of Housing And Urban Development
National Flood Insurance Program
List of Servicing Company Offices
March 1, 1975

ALABAMA
The Hartford Insurance Group
Hartford Building
100 Edgewood Avenue
Atlanta, Georgia 30301
Phone: (404) 521-2059

ALASKA
Industrial Indemnity Co. of Alaska
P. O. Box 307
Anchorage, Alaska 99510
Phone: (907) 279-9441

ARIZONA
Aetna Technical Services Inc.
Suite 901
3003 North Central Avenue
Phoenix, Arizona 85012
Phone: (602) 264-2621

ARKANSAS
The Travelers Indemnity Company
700 South University
Little Rock, Arkansas 72203
P. O. Box 51
Phone: (501) 664-5085

CALIFORNIA-NORTHERN
Fireman's Fund American Insurance Companies
P. O. Box 3136
San Francisco, California 94119
Phone: (415) 421-1676

CALIFORNIA-SOUTHERN
Fireman's Fund American Insurance Companies
P. O. Box 2323
Los Angeles, California 90051
Phone: (213) 381-3141

COLORADO
CNA Insurance
1660 Lincoln-Suite 1800
Denver, Colorado 80203
Phone: (303) 266-0561

CONNECTICUT
Aetna Insurance Company
P. O. Box 1779
Hartford, Connecticut 06101
Phone: (203) 523-4861

DELAWARE
General Accident F & L Assurance Corp. Ltd.
414 Walnut Street
Philadelphia, Pennsylvania 19106
Phone: (215) 238-5000

FLORIDA
The Travelers Indemnity Company
1516 East Colonial Drive
Orlando, Florida 32803
Phone: (305) 896-2001

GEORGIA
The Hartford Insurance Group
Hartford Building
100 Edgewood Avenue
Atlanta, Georgia 30301
Phone: (404) 521-2059

HAWAII
First Insurance Co. of Hawaii, Ltd.
P. O. Box 2866
Honolulu, Hawaii 96803
Phone: (808) 548-511

IDAHO
Aid Insurance Company
Snake River Division
1845 Federal Way
Boise, Idaho 83701
Phone: (208) 343-4931

ILLINOIS
State Farm Fire & Casualty Co.
Illinois Regional Office
2309 E. Oakland Avenue
Bloomington, Illinois 61701
Phone: (309) 557-7211

INDIANA
United Farm Bureau Mutual Insurance Co.
130 East Washington Street
Indianapolis, Indiana 46204
Phone: (317) 263-7200

IOWA
Employers Mutual Casualty Company
P. O. Box 884
Des Moines, Iowa 50304
Phone: (515) 280-2511

KANSAS
Royal-Globe Insurance Companies
1125 Grand Avenue
Kansas City, Missouri 64141
Phone: (816) 842-6116

KENTUCKY
CNA Insurance
580 Walnut Street
Cincinnati, Ohio 45202
Phone: (513) 621-7107

LOUISIANA
Aetna Technical Services, Inc.
P.O. Box 61003
New Orleans, Louisiana 70160
Phone: (504) 821-1511

MAINE
Commercial Union Insurance Company
c/o Campbell, Payson & Noyes
27 Pearl St., Box 527 Pearl St. Station
Portland, Maine 04116
Phone: (207) 774-1431

MARYLAND
U.S. Fidelity & Guaranty Company
P.O. Box 1138
Baltimore, Maryland 21203
Phone: (301) 539-0380

MASSACHUSETTS-EASTERN
Commercial Union Insurance Company
1 Beacon Street
Boston, Massachusetts 02108
Phone: (617) 725-6128

MASSACHUSETTS-WESTERN
Aetna Insurance Company
P.O. Box 1779
Hartford, Connecticut 06101

MICHIGAN
Insurance Company of North America
Room 300-Buhl Building
Griswold & Congress Streets
Detroit, Michigan 48226
Phone: (313) 963-4114

MINNESOTA-EASTERN
The St. Paul Fire & Marine Company
P.O. Box 3470
St. Paul, Minnesota 55165
Phone: (612) 222-7751

MINNESOTA-WESTERN
The St. Paul Fire & Marine Company
7900 Xerxes Avenue South
Minneapolis, Minnesota 55431
Phone: (612) 835-2600

MISSISSIPPI
The Travelers Indemnity Company
5360 Interstate 55 North
P.O. Box 2361
Jackson, Mississippi 39205
Phone: (601) 956-5600

MISSOURI-EASTERN
MFA Insurance Companies
1817 West Broadway
Columbia, Missouri 65201
Phone: (314) 445-8441

MISSOURI-WESTERN
Royal-Globe Insurance Companies
1125 Grand Avenue
Kansas City, Missouri 64141
Phone: (816) 842-6116

MONTANA
The Home Insurance Company
8 Third Street N. P.O. Box 1031
Great Falls, Montana 59401
Phone: (406) 761-8110

NEBRASKA
Royal-Globe Insurance Companies
1126 Grand Avenue
Kansas City, Missouri 64141
Phone: (816) 842-6116

NEVADA
The Hartford Insurance Company
P.O. Box 500
Reno, Nevada 89504
Phone: (702) 329-1061

NEW HAMPSHIRE
Commercial Union Insurance Company
1 Beacon Street
Boston, Massachusetts 02108
Phone: (617) 725-6128

NEW JERSEY
Great American Insurance Company
5 Dakota Drive
Lake Success, New York 11040
Phone: (201) 224-4200

NEW MEXICO
CNA Insurance
1660 Lincoln St., Suite 1800
Denver, Colorado 80203
Phone: (303) 266-0561

NEW YORK
Great American Insurance Company
5 Dakota Drive
Lake Success, New York 11040
Phone: (516) 775-6900

NORTH CAROLINA
Kemper Insurance
1229 Greenwood Cliff
Charlotte, North Carolina 28204
Phone: (704) 372-7150

NORTH DAKOTA
The St. Paul Fire & Marine Insurance Company
254 Hamm Building
408 St. Peter Street
St. Paul, Minnesota 55102
Phone: (612) 227-9581

OHIO-NORTHERN
Commercial Union Insurance Company
1300 East 9th St.
Cleveland, Ohio 44114
Phone: (216) 522-1060

OHIO-SOUTHERN
CNA Insurance
580 Walnut Street
Cincinnati, Ohio 45202
Phone: (513) 621-7107

OKLAHOMA
Republic-Vanguard Insurance Group
P. O. Box 3000
Dallas, Texas 75221
Phone: (214) 528-0301

OREGON
State Farm Fire & Casualty Company
4600 25th Avenue, N.E.
Salem, Oregon 97303
Phone: (503) 393-0101

PENNSYLVANIA
General Accident F & L Assurance Corp., Ltd.
414 Walnut Street
Philadelphia, Pennsylvania 19106
Phone: (215) 238-5512

PUERTO RICO
I.S.O. of Puerto Rico
Penthouse 7th Ochoa Bldg.
7th floor, P.O. Box 1333
San Juan, Puerto Rico 00902
Phone: (809) 723-0000

RHODE ISLAND
American Universal Insurance Co.
144 Wayland Avenue
Providence, Rhode Island 02904
Phone: (401) 351-4600

SOUTH CAROLINA
Maryland Casualty Company
P. O. Box 11615
Charlotte, North Carolina 28209
Phone: (704) 525-8330

SOUTH DAKOTA
The St. Paul Fire & Marine Insurance Co.
254 Hamm Building
408 St. Peter Street
St. Paul, Minnesota 55102
Phone: (612) 227-9581

TENNESSEE
CNA Insurance
110-21st Avenue South
Nashville, Tennessee 37203
Phone: (615) 327-0061

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

NOV 23 1976

CONSTRUCTION GRANTS
Program Requirements Memorandum No. 77-1

SUBJECT: Treatment Works for Recreational Parks, Industrial Parks and Institutions

FROM: John T. Rhett, Deputy Assistant Administrator for Water Program Operations (WH-546) John T Rhett

TO: Regional Administrators I - X

ATTN: Water Division Directors

I. PURPOSE

This memorandum confirms Agency policy on construction grant funding of treatment works which have as their primary or exclusive purpose providing service for recreational parks, industrial parks or institutions such as schools, hospitals, prisons, and nursing homes.

II. DISCUSSION

Applications for grants for wastewater treatment projects for recreational parks, industrial parks, schools and various other institutions have been received in several regions. Regions have asked whether these projects should receive Federal assistance while facility needs and permit conditions for existing communities remain unmet.

It is the policy of this Agency, consistent with P.L. 92-500, to assign highest priority to the provision of grant assistance for wastewater treatment works to reduce pollution from the backlog of existing municipal wastewater discharges. Program Guidance Memorandum (SAM-9) reaffirms this objective, stating that construction grant funds are intended to be used primarily for the abatement of existing pollution rather than for the treatment of expected future wastewater flows. As a means of attaining this objective, the above memorandum requires that the major priority system criterion, "population affected" be defined as that population presently existing within the affected area.

III. RELATIONSHIP TO OTHER REQUIREMENTS

This memorandum is concerned with the preparation of State project priority lists and the Agency's existing policy with respect to the funding of treatment works for recreational parks, industrial parks or institutions insofar as it concerns the ranking of projects on State project priority lists. This memorandum does not affect the Agency's requirements concerning the eligibility of grantees or the eligibility of projects for the treatment of industrial wastes. The Agency's regulations define eligible grantees, municipalities, in 40 CFR §35.905-14 and indicate that certain grant applicants, such as a school district which does not have as one of its principal responsibilities the treatment, transport, or disposal of liquid wastes, would not be eligible for grant assistance. The Agency's regulations in 40 CFR §35.925-15 state the costs for facilities for the treatment of industrial wastes are not allowable unless the grantee-applicant is required to remove such pollutants from non-industrial sources and the project is included in a waste treatment system with the principal purpose of providing treatment for domestic wastes of an entire area. The Agency may continue to deny grant assistance to such grantee applicants or for such projects irrespective of and independent of its consideration of State project priority lists and review of individual grant applications inconsistent with the Agency's policies regarding priority lists set forth in this memorandum.

IV. POLICY

A. Objectives

Wastewater treatment projects designed to serve proposed recreational parks, industrial parks, and institutions such as schools, hospitals, prisons and nursing homes are not to be grant funded until existing needs for pollution control have been met. Treatment works projects which have as their primary or exclusive purpose providing service for existing parks or institutions are not to be grant funded unless their construction is necessary to alleviate a serious, existing pollution problem and the individual projects are justified by a rigorous case-by-case application of the primary priority system criteria (i.e., the severity of pollution problems, the size of the existing population affected, and the need for the preservation of high quality waters.)

B. State Responsibilities

To achieve the above objectives, EPA will confirm and strengthen its existing policy by requiring states to do the following:

(1) Apply the "existing population affected" criterion rigorously in the preparation of state project priority lists to exclude from fundable ranking treatment works projects which have as their primary or exclusive purpose providing service for proposed recreation parks, industrial parks, and institutions, until projects meeting the criterion have been funded.

(2) Strictly apply the priority criteria cited in the above presentation of EPA's objectives on a case-by-case basis to projects designed to control existing pollution problems created by existing parks and institutions.

(3) Review grant applications, including plans of study and facility plans, for individual projects to further assure compliance with the above priority list requirements.

C. EPA Responsibilities

EPA will confirm and strengthen its existing policy by doing the following:

(1) Exclude any projects failing to comply with the requirements set forth in the prior section concerning a State's responsibilities in the preparation of the State project priority list prior to the approval of the State project priority list.

(2) Review grant applications for individual projects to further assure compliance with the requirements set forth in the prior section concerning a State's responsibility in reviewing individual grant applications and reject any applications failing to meet these requirements. States and grant applicants must continue to recognize that EPA approval of Step 1 funding does not constitute a commitment for the award of Step 2 grant assistance.

V. IMPLEMENTATION

The States are to be advised of the Agency's confirmation and extension of its policy with regard to this subject area at once. The States will be requested to begin immediately to review individual grant applications to implement the requirements set forth above outlining State responsibilities to assure compliance with EPA's policy and to reject non-conforming applications. EPA will continue to confirm and strengthen its existing policy and review individual grant applications to further assure compliance with those requirements. The Regional Administrator, at his discretion, may review existing State project priority lists and will review forthcoming priority lists to bring them into conformance with the above-outlined objectives and the requirements set forth above concerning State responsibilities.

VI. REFERENCES

A. 40 CFR §35.914(c)(1), State Determination of project priority lists; project priority list.

B. Program Guidance Memorandum: SAM-9, State Priority Systems Used in the Development of State Project Priority Lists, September 29, 1975.

C. 40 CFR §35.905-14 Municipality.

D. 40 CFR §35.925-15 Treatment of industrial wastes.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

November 29, 1976

OFFICE OF WATER AND
HAZARDOUS MATERIALS

CONSTRUCTION GRANTS PROGRAM
REQUIREMENTS MEMORANDUM
PRM #77-2

SUBJECT: Grant Eligibility of Start-up Services

FROM: John T. Rhett, Deputy Assistant Administrator
for Water Program Operations (WH-546) John T Rhett

TO: Regional Administrators I - X
ATTN: Water Division Directors

PURPOSE: The purpose of this memorandum is to identify specific services, rendered during the start-up period of a new treatment works, that are eligible for grant funding. Such services will help assure that municipal treatment works will achieve operational objectives more rapidly and effectively.

DISSUSSION: In response to a recognized need to place increased emphasis on the effective operation of new waste treatment facilities constructed with Federal grant funds, it has been determined that the cost of certain services provided during the plant start-up period shall be eligible for grant support. Such services are intended to assure that: design operational efficiency is achieved as quickly as possible; process control and related equipment problems are identified and resolved; onsite instruction to personnel in details of the process and equipment of each particular plant is provided, and final revisions to the O&M manual, based upon actual operating experience, are made.

POLICY: This PRM confirms eligibility for start-up services under the following terms and conditions. Start-up services for new wastewater treatment works constructed with contract authority funds are eligible for grant support in accordance with the following guidance.

Grant eligible start-up services will average 90 man-days for most treatment plants. For large or complex plants, however, grant eligible start-up services may range up to 300 man-days. Start-up services shall be completed within a period of twelve months. In addition to grant eligible start-up services, grantees, in most cases, should be encouraged to negotiate separate agreements for technical and training services to identify and solve operational problems beyond the initial start-up period. However, only that period of time which conforms with guidance provided herein will be eligible for grant assistance.

Grant eligible start-up services are limited to those items described below. (Other services proposed for grant eligibility will be considered only on a case-by-case basis by the Regional Administrator.) The extent of such services will depend on the size and complexity of the facility and the capabilities of existing or new operational and management staff. In many cases services to address the potential needs below may be coupled with other related services. To be grant eligible, the services must be rendered by the design engineer or others identified by the design engineer.

1. Pre and post start-up personnel training--i.e., onsite training given plant operation and maintenance personnel on the operation and control of the specific treatment processes of the facility as well as specialized training required for the safe operation and maintenance of plant equipment.

It could also include consultation on the staffing and training plan before completion of construction. Such consultation would be supplemental to the O&M manual and intended to give plant personnel a clear understanding of individualized operational and management responsibilities. Grant eligible training and related consultation are not to be a substitute for routine, entry-level or update operator training, the funding of which is the responsibility of the grantee.

2. Fine tuning to optimize process control--i.e., expert operational assistance for adjustment and "fine tuning" of the treatment processes and related equipment functions to optimize performance, safety and reliability under actual operating conditions. This should include the detailing of operational procedures under both normal and abnormal conditions so as to achieve consistent, reliable, and efficient performance from each process component at all times.

3. Laboratory procedures--i.e., onsite training and instruction to assure that the sampling and laboratory testing program needed for satisfactory process control and regulatory monitoring and reporting are fully understood. Entry-level or update training in basic laboratory testing and procedures for routine analyses are not grant eligible, although training in unique testing requirements related to some unusual unit process or process equipment may be determined to be grant eligible.

4. Maintenance management system--i.e., start-up services to assure effective implementation of the maintenance management system outlined in the facility's O&M manual. Included is training of the operation and maintenance staff in the details of the maintenance management system to establish and maintain a preventive maintenance program.

5. Records management systems--i.e., services to provide the training needed to implement a records management system as outlined in the O&M manual. It will become a major element in the larger and more complex plants that require a refined system to adequately handle records related to process control, effluent quality monitoring and reporting requirements, inventories for chemicals, supplies, and spare parts, etc.

6. Revise O&M manual--i.e., revising the O&M manual based upon actual operating experience obtained during the start-up period. It is not intended to replace the present requirements for drafting and finalizing the O&M manual before plant start-up, but does recognize that some aspects of plant operation and process control can be documented more fully after a period of actual plant operation.

Note that costs normally associated with the operation and maintenance of a municipal wastewater treatment facility, such as salaries for operation and maintenance personnel, chemicals (except for the basic inventory required for start-up), power, etc., are not eligible. Also ineligible are the costs of all off-site formal training/orientation programs. Finally, wet and dry equipment and facility testing is the responsiblity of the contractor under the supervision of the Engineer.

IMPLEMENTATION: Start-up service provisions should normally be submitted as part of a Step 3 grant, and State agencies and potential Step 3 grantees should be encouraged to consider the development of appropriate provisions as soon as possible. For existing Step 3 projects that have not begun actual plant operations, grantees should be encouraged, where timing permits, to develop start-up service provisions prior to plant start-up. Under exceptional circumstances, consideration may be given to eligibility of start-up services for grant funded projects that have already begun operation but for which the Step 3 grant has not been closed out. However, reimbursement should not be made for start-up services completed prior to the effective date of this PRM unless specifically described in existing contract documents.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

NOV 29 1976

OFFICE OF WATER AND
HAZARDOUS MATERIALS

CONSTRUCTION GRANTS
PROGRAM REQUIREMENTS MEMORANDUM
PRM #77-3

SUBJECT: Plan of Operation for Municipal Wastewater Treatment Facilities

FROM: John T. Rhett, Deputy Assistant Administrator for Water Program Operations (WH-546)

John T Rhett

TO: Regional Administrators I - X
Attn: Water Division Directors

PURPOSE

This memorandum provides guidance on preparing a Plan of Operation for municipal wastewater treatment facilities being constructed, modified, or expanded under the Construction Grants program.

DISCUSSION

Section 204(a)(4) of the Federal Water Pollution Control Act Amendments (PL 92-500) requires all municipal wastewater treatment facilities constructed with Federal funds to have a Plan of Operation. This memorandum contains guidance for the development of such a Plan. Additional details on this requirement can be found in 40 CFR 35.935-12 of the Federal Register.

A Plan of Operation is intended to identify specific actions and related completion dates to assure that the facility and all associated personnel are properly prepared for start-up and continued operation. Actions identified will be responsive to all technical and administrative requirements for efficient and reliable performance, including all such elements outlined in the Operation and Maintenance (O&M) Manual. A Plan of Operation is not intended to supplant the O&M Manual, which provides long-term guidance for efficient facility operation and maintenance, but rather summarizes the actions necessary to assure that all steps required for start-up and operation are taken at the appropriate times. The Plan of Operation provides detail on such matters as who will perform the necessary tasks, when and how they will be undertaken, and, where necessary, the nature of each task. For example, the O&M Manual will indicate the staffing and personnel training needs for the facility; the Plan of Operation will contain the actual schedule to be followed for hiring and/or training those personnel.

POLICY

Plans of Operation must be submitted and approved to meet requirements of Section 204(a)(4) of PL 92-500 and 40 CFR 35.935-12. Content of the Plans of Operation and timing for completion and submittal should follow the guidance of this Memorandum and the attachments thereto. The Plan of Operation shall provide a concise, sequential description of, and implementation schedule for, those activities necessary to assure cost-effective, efficient and reliable start-up and continued operation of the facility. The cost of preparing a Plan of Operation is grant eligible and should be identified as a separate line item in the project costs.

IMPLEMENTATION

Municipal wastewater treatment facility construction projects vary considerably in size and complexity, and the degree of detail in a Plan of Operation should reflect this variation. The Plan of Operation must be tailored to the specific needs of each individual project. The basic guidance document for the development of a Plan of Operation is *Federal Guidelines - Operation and Maintenance of Wastewater Treatment Facilities*, published by EPA in August 1974. Application of this guidance to the development of a Plan of Operation is discussed in Attachment "A" to this PRM entitled "Basic Considerations in the Development of a Plan of Operation for Wastewater Treatment Plants."

A "sample" Plan of Operation is presented in Attachment B. This sample illustrates one format for a Plan. The action items shown are not all-inclusive, nor does each of these items necessarily apply to every project. An alternative format would be a time based chart that displays graphically the time span over which items would be completed. In this case appropriate narrative should be included to provide a full understanding of each area of activity. Reference to the O&M manual should be utilized whenever possible to avoid duplication.

Hereafter, grantees should submit a *preliminary* Plan of Operation along with the construction plans and specifications. This preliminary Plan of Operation should be reviewed by the State Water Pollution Control Agency concurrently with the review of project plans and specifications. If the plan is incomplete or in need of corrections, resolution should be accomplished in the same way that problems encountered in the processing of plans and specifications are now resolved. Certain information needed to complete a Plan of Operation, particularly the timing for implementing certain items, will not be known until the construction phase of the project is underway. In a preliminary Plan, therefore, it may be necessary to define implementation schedules either in terms of an estimated percent of completion of construction, or in terms of a certain number of days before an operational start date. In fact, it may not be possible to identify all necessary actions related to operations in the preliminary Plan, although it should be as complete as possible.

It is not required to amend existing Step 2 and Step 3 grants to provide for preparing a preliminary Plan of Operation.

After construction of the project has begun, the preliminary Plan must be updated. A final Plan of Operation should be completed, submitted, and approved not later than the date by which the 50% grant payment of a Step 3 grant is made. It then will be available to the chief operator, who should be on board by that time. In that way, the Plan can serve as a guide to adequately prepare for proper start-up and operation of the treatment facility.

REFERENCES

PL 92-500, Section 204(a)(4)
40 CFR 35.935-12

ATTACHMENT A
to PRM #77-3

Basic Considerations in the Development of a Plan of Operation for Wastewater Treatment Facilities

A Plan of Operation for a new or expanded wastewater treatment facility should provide an action plan and implementation schedule to assure that all necessary actions to properly prepare for facility start-up and continued operation are accomplished in a timely fashion. The basic guidance document for the development of a Plan of Operation is Federal Guidelines - Operation and Maintenance of Wastewater Treatment Facilities, published by the EPA in August 1974. Some of the guidance needed to implement the Plan of Operation may be contained in the Operation and Maintenance (O&M) Manual prepared for the facility. Appropriate reference in the Plan of Operation to elements of the O&M Manual may suffice for describing many specific actions. However, at a minimum the Plan of Operation must identify actions necessary to commence operations and contain an implementation schedule for their accomplishment. It is suggested that a summary of the implementation schedule be compiled on a chronological basis. This will allow easy reference on a routine basis to assure that necessary actions are initiated and completed on schedule.

The following very briefly identifies the scope of each of the areas that might be included in a Plan of Operation. The referenced Section numbers in parentheses relate to appropriate sections in the Federal Guidelines identified above which contain more detailed information on each of the areas.

1. Staffing and Training (Section 2.0)
   This is a particularly important element in any plan of operation to assure that supervisory, operations, maintenance, laboratory support, and administration personnel are hired and trained in a timely manner. Sources of training should be identified whenever possible. Of particular importance is the need to have the Chief Operator on site by 50% completion of construction.

2. Records, Reports, and Laboratory Control (Section 3.0)
   The establishment of an adequate laboratory, recording, and reporting system should be identified, including the development of any special forms needed for reporting or process control requirements. Any special training needs related to a laboratory control program should be specified.

3. Process Control and Start-up Procedures
   Adequate consideration of plant start-up is essential to assure subsequent plant operation with a minimum of problems and to set the proper framework for long-term, trouble-free,

efficient plant operation under all operating conditions. The plan should identify necessary actions related to start-up, such as wet and dry testing of equipment, instrument calibration, and a review of process control procedures during the start-up period. (For additional guidance on plant start-up, see PRM #77-2).

4. Safety (Section 5.0)
   Effective employee safety programs should be developed and appropriate training conducted in advance of start-up. Existing and projected state and local safety requirements should be complied with. All hazardous conditions should be appraised and appropriately considered in the inplant safety and health plan and the training program should be responsive to identified needs and guidance.

5. Emergency Operating Plan (Section 6.0)
   A comprehensive contingency plan for emergency operations should be included in the plant O&M manual. This plan should be substantially implemented in advance of start-up. Appropriate instructions and specific response guidance should be issued in order to minimize the possibility of plant failures under all conditions that may occur. An effective emergency response plan requires advance training in order to be effective.

6. Maintenance Management (Section 7.0)
   A schedule for developing and implementing a maintenance management system should be included. This should consider the need for training to operate the system and/or to deal with complex equipment maintenance problems. Additional considerations include personnel training, supplies of chemicals used in the treatment process or process control, laboratory supplies, the provision of necessary maintenance tools and spare parts inventory.

7. Operation and Maintenance Manual
   The Plan of Operation should include sufficient lead-time for the submission and review of the plant O&M manual so as to ensure that the manual is approved by the State Water Pollution Control Agency at least 30 days prior to plant start-up. The Plan of Operation should also identify future date(s) for updating the manual in order to ensure that the most effective operational guidance is provided based upon actual operating experience.

8. Operations Budget (Section 9.0)
   Any planning process must consider budgetary constraints on implementation and provide for a process for adequate budget controls. Consideration must be given to the development and

use of a user charge system; also to the availability of 10% of industrial cost recovery receipts for supporting O&M costs.

9. Other Elements

   Other elements should be addressed as necessary to assure timely implementation of actions related to continued efficient and reliable operation of the facility. Actions and timing related to the development and implementation of sewer use ordinances, pretreatment ordinances, or other local rules or regulations should also be identified. Establishment of procedures for preparing an annual O&M report should be considered for staffing, training, budget planning, maintenance, and future construction planning purposes.

The following guidance is suggested for determining the adequacy of preliminary Plans of Operation:

1. Descriptions and scheduling for elements 2-5 and 7 (above) should be essentially complete in the preliminary Plan of Operation. The staffing plan of element 1 (above) should also be complete, but the training plan may be tentative.

2. Descriptions and scheduling for elements 6, 8 and 9 (above) may be tentative in the preliminary Plan of Operation.

ATTACHMENT B
to PRM #77-3

Sample

Final Plan of Operation

Preface

Note that this "preface" is purely for descriptive purposes in setting the stage for this example of a Plan of Operation. It would not normally be included in an actual Plan.

The following material presents one example of a final Plan of Operation prepared in conjunction with the construction of a new or expanded wastewater treatment facility. This example is based upon a hypothetical situation of a new wastewater treatment facility being constructed for the City of Smithville, Pa. Smithville is a medium sized bedroom community near a large metropolitan area and has an existing secondary treatment facility. The new "Westside Wastewater Treatment Facility" is being constructed to provide treatment of wastes from a previously unsewered area recently annexed by the City, an industrial park constructed for light manufacturing industry, and housing in the same general area, and to provide treatment of some wastes from the presently overloaded facilities.

The existing facility will continue to provide treatment to the older part of Smithville. The new facility is in a size range of 5-10 mgd. The project has followed a normal procedure under the construction grant program of PL 92-500. A "preliminary" Plan of Operation would be submitted with the plans and specifications at the completion of the Step 2 facility design stage. It would differ from this example of a "final" Plan of Operation in that specific dates would not be shown because a construction timeframe has not been established. Instead, implementation could be shown either as an estimate of the percent completion of construction, or as a certain number of days before an operational start date. Also, it may not be possible to identify all necessary actions related to operations in the preliminary Plan, although it should be as complete as possible.

This example Plan of Operation is not intended as a rigid guide. Obviously, the size, complexity, and type of facility, as well as other factors, such as whether the facility is new or an expansion or modification of an existing facility, will influence the extent of information required in the Plan of Operation. It is important, however, that each of the areas illustrated in the example be considered in the Plan of Operation for any project to assure that all potential needs have been addressed. As can be seen, the intent of the Plan of Operation is clearly to provide a simple, straightforward means of identification of an implementation plan for those action items essential to successful start-up and continued operation of the treatment facility.

Introduction

This plan of operation provides an identification of needed actions and an implementation schedule for their completion to assure timely start-up and efficient operation of the new Westside Wastewater Treatment Facility now under construction in the City of Smithville, Pa. Construction of this facility began in May 1975 and is scheduled to be complete in June 1978. Adherence to the schedule contained in this Plan of Operation will help assure that start-up of the facility can be accomplished in a timely and efficient manner.

Many of the details related to necessary actions identified in this plan of operation are fully discussed in the Operation and Maintenance Manual being prepared for this facility. Reference to sections of that manual are included where appropriate to avoid repetition. A copy of the draft O&M manual is provided with this plan to provide necessary back-up information.

1. Summary of Implementation Dates

The implementation dates of the following sections are arrayed below in chronological order to allow rapid identification of action items and related completion dates. Frequent reference to this listing will help avoid the possibility of omission or slippage of key actions necessary for successful plant start-up and continued operation.

Date	Action	Plan of Operation Section Reference
May 1975	Start construction of treatment facility	
July 1975	Promulgate new sewer use ordinance to accomodate industrial discharges	10(a)
	Promulgate industrial pretreatment ordinance	10(b)
June 1976	FY 77 pre-start-up budget considerations	9
January 1977	Superintendent (Chief Operator) on Board	2(a)
	Complete draft of O&M Manual	8(a)
	Review of user charge and industrial cost recovery systems	9
June 1977	Senior Operator on Board	2(b)
	Chief Chemist on Board	2(c)
	FY 78 budget consideration for initial operation	9
August 1977	Begin influent sampling program	4(a)
	Begin development of detailed emergency procedures plan	6(a)
Sept. 1977	Begin development of detailed guidance on employee safety and related training program	5(a)
October 1977	Staff training schedule finalized and approved by State	2
January 1978	Begin development of action plan for process control and "fine tuning"	4(b)
	Begin finalization of cooperative agreements with other agencies	6(b)
	Begin specialized training on incinerator O&M	7(b)
February 1978	Shift Operators on Board	2(d)
	Complete details of emergency procedures plan	6(a)

Date	Action	Plan of Operation Section Reference
February 1978 (continued)	Begin provision of laboratory supply inventory	3(b)
	Begin finalization of system and procedures for notification of unusual industrial waste discharges	4(d)
	Begin employee training in emergency procedures	6(c)
	Begin training of plant personnel on maintenance procedures	7(f)
	Finalize O&M Manual	8(b)
March 1978	Complete detailed guidance on employee safety and related training program	5(a)
	Finalize cooperative assistance agreements with other agencies	6(b)
	Start review of laboratory analytical and reporting requirements with operators and laboratory staff	3(a)
	Complete development of action plan for process control and "fine tuning"	4(b)
	Start safety training program	5(b)
	Begin debugging of maintenance management system computer software	7(c)
April 1978	Complete review of laboratory analytical and reporting requirements with plant staff	3(a)
	Complete inventory of laboratory supplies	3(b)
	Complete employee training in emergency procedures	6(c)
	Complete spare parts inventory	7(a)
	Complete specialized training on incinerator O&M	7(b)
	Start review of process control and detailed start-up procedure with plant staff	4(c)
	Begin training on maintenance management system usage	7(d)
	O&M Manual approved	8(c)
May 1978	Complete debugging of maintenance management system computer software	7(c)
	Complete training on maintenance management system usage	7(d)
	Begin pre-start up maintenance schedule	7(e)
	Maintenance crew on Board	2(e)

Date	Action	Plan of Operation Section Reference
May 1978 (continued)	Complete training in heavy metals analysis	3(c)
	Treatment facility design, construction, operations records, and as built plans completed and on file	3(d)
	Complete review of process control and detailed start-up procedures with plant staff	4(c)
	Complete influent sampling program	4(a)
	Finalize system and procedures for notification of unusual industrial waste discharges	4(d)
	Complete safety training program	5(b)
June 1978	Complete wet and dry testing of all equipment	4(e)
	Complete construction of treatment facility (Facility ready for operation)	
	Start periodic safety reviews with staff	5(c)
	Complete training of plant personnel on maintenance procedures	7(f)
June 1979	Conduct first annual plant safety review and modify safety program, if necessary	5(d)
	Initiate annual emergency procedures update and employee training program	6(d)
	Update O&M Manual	8(d)
	Complete first annual treatment system O&M report	10(c)

2. Staffing and Training

The recommended staffing complement and a suggested organizational chart is included in Section ___ of the O&M manual. In accordance with EPA guidelines, the chief operator of the facility should be on board at the 50% completion point of the construction phase of the project. The City has been notified of this requirement, and recruitment actions will begin soon.

In order to assure adequate time for familiarization with the new facility and to adequately prepare for start-up, the staff of the facility should be hired in accordance with the following schedule:

a. Superintendent (Chief Operator) on Board-	January 1977
b. Senior Operator on Board-	June 1977
c. Chief Chemist on Board-	June 1977
d. Shift Operators on Board-	February 1978
e. Maintenance Crew on Board-	May 1978

Date	Action	Plan of Operation Section Reference
May 1978 (continued)	Complete training in heavy metals analysis	3(c)
	Treatment facility design, construction, operations records, and as built plans completed and on file	3(d)
	Complete review of process control and detailed start-up procedures with plant staff	4(c)
	Complete influent sampling program	4(a)
	Finalize system and procedures for notification of unusual industrial waste discharges	4(d)
	Complete safety training program	5(b)
June 1978	Complete wet and dry testing of all equipment	4(e)
	Complete construction of treatment facility (Facility ready for operation)	
	Start periodic safety reviews with staff	5(c)
	Complete training of plant personnel on maintenance procedures	7(f)
June 1979	Conduct first annual plant safety review and modify safety program, if necessary	5(d)
	Initiate annual emergency procedures update and employee training program	6(d)
	Update O&M Manual	8(d)
	Complete first annual treatment system O&M report	10(c)

2. Staffing and Training

The recommended staffing complement and a suggested organizational chart is included in Section ___ of the O&M manual. In accordance with EPA guidelines, the chief operator of the facility should be on board at the 50% completion point of the construction phase of the project. The City has been notified of this requirement, and recruitment actions will begin soon.

In order to assure adequate time for familiarization with the new facility and to adequately prepare for start-up, the staff of the facility should be hired in accordance with the following schedule:

a. Superintendent (Chief Operator) on Board- January 1977
b. Senior Operator on Board- June 1977
c. Chief Chemist on Board- June 1977
d. Shift Operators on Board- February 1978
e. Maintenance Crew on Board- May 1978

As each of the personnel are located and hired, training needs must be identified in cooperation with the State Water Pollution Control Agency. A training schedule should be finalized no later than October 1977. It is anticipated that additional training in activated sludge process control will be needed for this new facility and consideration should be given to the training courses available through the Smith County Community College.

Certain specialized training needs have been identified for this new facility and are discussed as appropriate in other sections of this plan.

3. Records, Reports and Laboratory Control

Examples of daily log sheets, State reporting forms, and self-monitoring report forms to comply with NPDES permit requirements are included in Section ___ of the O&M manual. No special reporting requirements have been identified; however, certain heavy metals analysis must be included due to anticipated discharges from the Westside Industrial Park to be served by this facility.

		Start date	Completion date
a.	Conduct review of laboratory analytical and reporting requirements with operators and laboratory staff	March 1978	April 1978
b.	Provide inventory of laboratory supplies	Feb. 1978	April 1978
c.	Complete training in heavy metals analysis (identify source of training)		May 1978
d.	Treatment facility design, construction, operation records, and as built plans completed and on file in superintendent's office		May 1978

4. Process Control and Start-up Procedures

Process control and start-up procedures are detailed in Sections ____ and ____, respectively, of the O&M manual. Implementation of the actions identified in those sections should occur in accordance with the following schedule:

		Start date	Completion date
a.	Begin sampling program to define plant influent characteristics	August 1977	May 1978

		Start Date	Completion Date
b.	Develop action plan for process control and "fine tuning"	Jan. 1978	March 1978
c.	Review process control and detailed start-up procedures with plant operations and laboratory staff	April 1978	May 1978
d.	Finalize system and procedures for notification of unusual industrial waste discharges	Feb. 1978	May 1978
e.	Complete wet and dry testing of all equipment		June 1978

5. Safety

The need and specifics of a safety program for this facility are detailed in Section ___ of the O&M manual. Activities related to safety should be implemented in accordance with the following schedule:

		Start Date	Completion Date
a.	Develop detailed guidance on employee safety and related training program	Sept. 1977	March 1978
b.	Conduct training program for all plant staff prior to start-up	March 1978	May 1978
c.	Start periodic safety reviews with staff		June 1978
d.	Conduct first annual plant safety review and modify safety program if necessary		June 1979

6. Emergency Operating Plan

Detailed emergency operating procedures are outlined in Section ___ of the O&M manual. To assure success of these procedures during an emergency, the following actions should be taken:

		Start Date	Completion Date
a.	Develop details of emergency procedures plan including personnel assignments	August 1977	February 1978
b.	Finalize cooperative assistance agreements with other agencies	Jan. 1978	March 1978

	Start Date	Completion Date
c. Pre-start-up employee training	Feb. 1978	April 1978
d. Initiate annual procedures update and employee training program		June 1979

7. Maintenance Management

The maintenance management system for this facility is outlined in Section ___ of the O&M manual. The maintenance management system will utilize the City's computer capability to provide routine scheduling of preventive maintenance activities, spare parts inventory control, and records of running time and reliability of performance. To successfully implement this maintenance management system, the following actions must be taken:

	Start Date	Completion Date
a. Complete spare parts inventory including necessary tools		April 1978
b. Conduct specialized training on incinerator operation and maintenance by equipment supplier	Jan. 1978	April 1978
c. Debugging of computer software by subcontractor	March 1978	May 1978
d. Conduct training on system usage by subcontractor	April 1978	May 1978
e. Begin pre-start-up maintenance schedule		May 1978
f. Provide training of plant personnel on maintenance procedures	Feb. 1978	June 1978

8. Operation and Maintenance Manual

The operation and maintenance manual should be drafted, finalized, approved, and updated in accordance with the following schedule:

a. Drafted	January 1977
b. Finalized	February 1978
c. Approved	April 1978
d. Updated based on first year of operating experience	June 1979

9. Operations Budget

This facility is scheduled to begin operation in June 1978. Since the hiring and training of personnel should begin in January 1977, appropriate considerations of related costs must be provided in the City's FY 77 budget. Consideration of pre-start-up and full operation costs must be reflected in the City's FY 78 budget with the first full year of operation being FY 79. The City's user charge system and rate structure should be reviewed by January 1977 to assure an adequate base to provide needed operating and maintenance revenues.

10. Other Elements

The new Westside Wastewater Treatment Facility satisfies needs of the City of Smithville that will require responsive actions. To complete pre-start-up and post-operative actions that will assure continued operational success, the following actions must also be taken in addition to those previously identified:

a.	Promulgate new sewer use ordinance to accomodate industrial discharges-	July 1975
b.	Promulgate industrial pretreatment ordinance-	July 1975
c.	Complete first annual treatment system O&M report including recommendations on budget, staffing, training, maintenance and repairs, and future needs.	June 1979

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

DEC 15 1976

PROGRAM REQUIREMENTS MEMORANDUM
PRM #77 - 5

SUBJECT: Grant Eligibility of Land Acquisition by Leaseholds or Easements for Use in Land Treatment and Ultimate Disposal of Residues

FROM: Russell E. Train
Administrator

TO: Regional Administrators, I - X

PURPOSE:

This memorandum provides guidance for the interpretation of the construction grants regulations concerning grant eligibility of land acquired by leasing or easements for use in land treatment and sludge disposal.

DISCUSSION:

The Agency has conducted an intensive study over several months to determine if land acquisition by lease or easement should be grant eligible where the land would be an integral part of the treatment process or required for the ultimate disposal of residues resulting from wastewater treatment. The study concluded that under unusual circumstances land acquisition by lease or easement will be more cost-effective than fee simple purchase. Use of grant funds for acquisition by lease or easement is legal where cost-effective. Serious risks exist, however, including the possibility that the lease will be prematurely terminated by the lessee; that the conditions of the lease or easement will be broken; that funds for payments will be misappropriated; and that renewal will be prohibitively expensive or impossible.

It has been roughly estimated that leasing/easements will be cost-effective only for several hundred projects nationwide. Most of these projects would be in arid or semi-arid areas where effluent has a high value and land has a low value. In these areas, some landowners may be willing to pay for wastewater effluents, accept wastewater effluents free of charge or make leasing arrangements at a nominal charge.

Leasing for substantial fees would seldom be cost-effective. Normally, such cases would be limited to situations where landowners are willing to lease for total payment equivalent to less than fair market value.

POLICY:

The cost of leasing or of obtaining an easement on land for land treatment or for ultimate disposal of residues from the wastewater treatment process is eligible for Federal grant assistance when otherwise in conformance with the requirements of Program Guidance Memoranda 49 and 67, and of this memorandum. The PGM provisions restricting eligibility to fee simple purchase are hereby superseded.

Prior to execution of a lease or an easement for land acquisition, the grantee shall obtain written approval from the Agency of the conditions for the lease or easement in order for the costs to be allowable for Federal funding. These conditions shall:

1. Limit the purpose of the lease or easement to land application (land treatment or sludge disposal) and activities incident to land application. (A provision for sub-leasing or licensing for purposes consistent with the use of land for application purposes may be included).

2. Describe explicitly the property use desired.

3. Waive the landowner's right to restoration of the property at the termination of the lease/easement.

4. Provide for payment of the lease/easement in a lump sum for the full value of the entire term (See item 6 below).

5. Recognizing the serious risk of premature lease termination, provide for full recovery of damages by the grantee in such an event with recovery of the paid Federal share or, alternatively, retention of the Federal share to be used solely for the eligible costs of the expansion or modification of the treatment works associated with the project. The damages would include the difference between the total present worth of costs of treatment works changes resulting from premature termination and the costs otherwise resulting from normal expiration of the lease. The damages would also include any additional losses or costs due to unplanned disruption of wastewater treatment.

6. Provide for leases/easements for a minimum of twenty (20) years, or the useful life of the treatment plant, whichever is longer, with an option of renewal for an additional term, as deemed appropriate.

Whenever leasing is to be recommended, steps shall be taken to insure that the required lands will be available when needed at the price and terms presented in the facility plan. The facility plan shall include a copy of the proposed leasing agreement and letters of intent to comply with such agreement from the concerned landowners. The Step 2 grant shall contain a condition precluding commencement of Step 2 design work until the grantee has purchased options to lease in accordance with the terms of the proposed leasing agreement.

The grantee must take special precautions to avoid actions which might be construed as a breach of the lease agreement. Land must be used as agreed upon in the lease/easement. Any payments (which would not be grant eligible) required for quantity of effluent or sludge applied should be paid promptly.

Leasing of required lands may be approved only where less costly than outright purchase of the lands as determined by a cost comparison for each case. Such comparison must demonstrate that the total present worth cost of the lease payments plus expected net income accruing to the landowner from retained uses of the land over 20 years will be less than an amount representing the market price for fee simple purchase minus the present worth of the land salvage value 20 years hence. The cost comparison must comply with the interest rate, planning period, and salvage value requirements of the Cost Effectiveness Analysis Guidelines (Appendix A of the Construction Grant Regulations).

Where water and/or nutrients are of value, leasing fees should be minimal or sale/donation of effluents to nearby agriculture or recreation activities should be possible without Federal grants for land purchase or leasing.

IMPLEMENTING PROCEDURE:

Each Region shall notify states of this PRM and take actions to assure that grantees meet all the conditions set forth by this memorandum when acquiring land by lease or easement.

REFERENCES:

Program Guidance Memorandum No. 49 of July 18, 1975 (PRM 75-25)
Program Guidance Memorandum No. 67 of April 2, 1976 (PRM 75-39)
40 CFR 35.940-3
40 CFR 4.600 et seq
40 CFR 30.810 et seq
Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, (P.L. 91-646) 42 USC Section 4651 et seq.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

AUG 05 1977

OFFICE OF WATER AND
HAZARDOUS MATERIALS

Program Requirements Memorandum
PRM 77-9

SUBJECT: Reallotment of Recovered Funds

FROM: John T. Rhett, Deputy Assistant Administrator
for Water Program Operations (WH-546)

Matthew Pilzys, Acting Deputy Assistant Administrator
for Resources Management (PM-224)

M.C. Pilzys

TO: Regional Administrators (I-X)
ATTN: Water Division Directors
Management Division Directors

PURPOSE:

The purpose of this memorandum is to set forth EPA policy regarding the reallotment of funds recovered from P.L. 92-500 authorizations and subsequent appropriations.

DISCUSSION:

Unobligated portions of State allotments are, at the end of their initial allotment periods, subject to reallotment as provided for in section 205(b)(1) of P.L. 92-500 and 40 CFR 35.910-2(a) and (b). However, the extent to which recoveries are subject to reallotment after the termination date of an initial allotment period is not as clearly defined. Section 205(b)(2) states that recovered obligations which are "released by the payment of the final voucher for the project shall be immediately credited to the State to which such sums were last allotted. Such released sums shall be added to the amounts last allotted to such State and shall be immediately available for obligation in the same manner and to the same extent as such last allotment." Hence, funds recovered upon the closeout of a project (on or after final payment) are subject to reallotment after the termination date of the most recent allotment in effect at the time of the closeout. Funds recovered as a result of the termination of a project are treated in the same manner.

Neither the Act nor the regulations address the reallotment of other recoveries, such as those resulting from underruns or descoping--i.e., recovered obligations other than those which "remain after final payment, or after termination of a project" (§35.910-2(c)).

Over the years of operating the construction grants program, it was common practice to treat all recoveries alike, and to have them remain in the States to which they were originally allotted. Distinctions were not made between those resulting from project closeouts and those resulting from actions taken by EPA due to changes occurring in the process of constructing a project. However, because of the explicit requirement of section 205(b)(2), that practice must be modified.

The date of the most recent allotment of funds is important for the reallotment process. $1 billion was allotted on May 18, 1977, and, in accordance with the Fiscal Year 1977 Supplemental Appropriations Act, is subject to reallotment after May 3, 1980, three years after the date of enactment. (The $480 million appropriated under the Public Works Employment Act will not be treated as an allotment for these purposes.)

POLICY:

FY-75, 74 and 73 funds which the Regional Administrator determines were recovered prior to May 18, 1977, as a result of the closing out of projects--i.e., at final payment or upon termination--will be subject to reallotment after September 30, 1977--the reallotment date of the $9 billion allotted in FY-76. All other FY-75, 74 and 73 funds which were recovered prior to May 18, 1977, will not be subject to reallotment on September 30, 1977.

The foregoing policy is applicable only to the September 30, 1977 reallotment. However, if the currently proposed legislation to extend for another year the reallotment date for FY-76 funds is enacted, the above policy will be applicable to the extended date, i.e., September 30, 1978 instead of September 30, 1977.

For future fiscal years, a distinction will not be made between recoveries resulting from project closeouts or terminations and those resulting from underruns or descoping. Accordingly, all recoveries made subsequent to May 17, 1977, regardless of how they are generated, will be subject to reallotment on the basis of the procedure established in §205(b)(2) of the Act. Therefore, funds recovered from May 18, 1977, until the date of the next allotment of funds, will be subject to reallotment after May 3, 1980.

When further funds are allotted, recoveries thereafter will be subject to the reallotment date of those funds. That is, the reallotment date for recoveries always relates to the most recent allotment.

(NOTE: Upon publication of "Facilities Planning 1981" (FP 81), policy pertaining to facilities planning contained in this PRM is discontinued.)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

DEC 28 1977

Construction Grants
Program Requirements Memorandum
PRM No. 78-1

SUBJECT: Erosion and Sediment Control in the Construction Grants Program

FROM: John T. Rhett, Deputy Assistant Administrator for Water Program Operations (WH-546) John T Rhett

TO: Regional Administrators (I-X)
ATTN: Water Division Directors

Purpose:

This memorandum establishes the policy pertaining to the requirements and procedures for controlling erosion and sediment runoff caused by the construction activity of projects funded under the EPA Construction Grants Program.

While engineering and agronomic practices for erosion and sediment control are site specific, detailed information pertaining to these practices can be found in a number of publications, including those listed in Attachment B. This memorandum provides guidelines and general principles to be used in preparing facilities plans and project design specifications and in conducting project inspections.

Discussion:

Problems associated with erosion and sediment loads resulting from construction activity have long been recognized. Erosion and subsequent excess sediment runoff are among the major factors directly responsible for nonpoint source pollution in streams and lakes. Additional problems which can occur include clogging of streams and lakes, alteration of natural habitats, and damage to the aesthetics of surface waters.

The on-going EPA construction grants program will continue to generate significant construction activity throughout the country. Ensuring that erosion and sediment control are properly handled in the process of constructing these waste treatment projects is part of EPA's overall responsibility. In December 1976, the Office of Water Planning and Standards published a report entitled "Nonpoint Source Control Guidance, Construction Activities." The document is to be used by States and areawide 208 agencies as a guide for establishing a nonpoint source pollution control program.

EPA policy is designed to ensure that:

1. Erosion and sediment control will be adequately addressed and handled in areas where wastewater treatment projects are proposed.

2. Appropriate soil conservation measures are incorporated as part of the engineering activities in the planning and design process, as well as the construction phase of construction grant projects.

Policy:

1. Facilities planning (Step 1) - Good environmental assessment or impact studies should investigate and evaluate the potential for erosion and sediment runoff which could occur as a result of construction and operation of the project. An effective erosion and sediment runoff control program should address measures to be taken during construction and, where appropriate, permanent controls to be incorporated into the completed project. Other factors being equal, sites chosen for construction of treatment facilities should be those which offer the least potential for erosion.

   In environmentally sensitive areas (floodplains, wetlands, coastal zones and estuaries, etc.), special construction procedures and requirements should be employed to minimize harm to the sensitive areas. All practicable measures should be utilized. When applicable, the requirements described in PRM 76-4 (Coordination of Construction Grants Program with EPA-Corps of Engineers Section 404/Section 10 Permit Programs) must also be implemented in conjunction with the erosion and sediment control program.

   Wherever State and local ordinances pertaining to construction activities are adequately defined, the grantee should clearly specify in the facilities plan, steps to be taken for controlling erosion and sediment in order to comply with the State and local ordinances. However, the evaluation of the adequacy of a project's erosion and sediment control plan should be based on the attached guidelines.

2. Design (Step 2) - Appropriate provisions of the erosion and sediment control program specified in the facilities plan should be implemented including: (a) scheduling construction activities to minimize adverse impacts; (b) providing plans and specifications for any permanent and temporary erosion control structures and; (c) including specific erosion and sediment control measures in O&M manuals. The construction specifications will require implementation of the specified erosion control plan during construction of the project.

3. Construction (Step 3) - Inspections conducted during construction should evaluate implementation of and adherence to temporary erosion and sediment control measures and their effectiveness. Attention should also be given to permanent erosion control structures during final inspections.

Detailed guidance to be used in evaluating erosion and sediment control aspects of construction grant projects, including a pertinent list of references, is attached.

Implementation:

The measures specified in this memorandum and its attachments are required for all projects resulting from Step 1 grants awarded after the date of this memorandum. Appropriate provisions for erosion and sediment control should be incorporated to the maximum extent practicable in other active construction grant projects. For example, Step 2 and Step 3 measures should be applicable to those presently active Step 2 and Step 3 grant projects respectively.

Attachments

Attachment A

Evaluation of Erosion and Sediment Control Measures

The objective of the program is to prevent and correct problems associated with erosion and sediment runoff processes which could occur during and after project construction. The program should be consistent with applicable local ordinances and the EPA Nonpoint Source Pollution Control Guidance. Whenever appropriate, the program should reflect the following engineering principles.

1. Construction site selection should consider potential occurrence of erosion and sediment losses. Study of the site conditions should include soil and geologic limitations, topography, vegetation, wildlife habitats, proximity to surface water, and climate.

2. The project plan and layout should be designed to fit the local topography and soil conditions.

3. When appropriate, land grading and excavating should be kept at a minimum to reduce the possibility of creating runoff and erosion problems which require extensive control measures.

4. Whenever possible, topsoil should be removed and stockpiled before grading begins.

5. Land exposure should be minimized in terms of area and time.

6. Exposed areas subject to erosion should be covered as quickly as possible by means of mulching or vegetation.

7. Natural vegetation should be retained whenever feasible.

8. Appropriate structural or agronomic practices to control runoff and sedimentation should be provided during and after construction.

9. Early completion of stabilized drainage system (temporary and permanent systems) will substantially reduce erosion potential.

10. Roadways and parking lots should be paved or otherwise stabilized as soon as feasible.

11. Clearing and grading should not be started until a firm construction schedule is known and can be effectively coordinated with the grading and clearing activity.

Because of technical limitations, it is recognized that the foregoing principles cannot always be incorporated in a project plan. Whenever needed, however, these practices should be included.

Minimum Requirements

In addition to the general engineering principles described in the previous paragraph, the following items represent the minimum engineering effort to be incorporated in development of the project.

1. Facility Planning (Step 1)

As part of the environmental assessment or environmental impact study, the potential for erosion and sediment runoff should be identified and evaluated. In determining the scope of the study, the following items should be considered and evaluated where appropriate:

- Soil and geologic characteristics
- Land topography and land use classification
- Drainage basin conditions
- Rainfall or wind characteristics

In environmentally sensitive areas such as floodplains and coastal estuaries, etc., special problems including long slopes, steep grades and highly erodible soils should be identified and evaluated. When appropriate, special construction procedures and constraints associated with these problems should be addressed and incorporated in the plans and specifications. For project sites where dewatering operations are required during construction, adverse effects from the discharge of silt-laden waters should be minimized by means of filtration or sedimentation basins, or any other appropriate methods.

For projects involving land treatment or disposal, methods of application should be carefully studied and selected to make sure that soil erosion and sediment runoff is minimized. In addition, requirements for sediment control practices and their maintenance after construction is completed should be specified.

2. Plans and Specifications (Step 2)

The project plans and specifications should include all structures and practices designed for erosion and sediment control. The plan should be consistent with the general sediment control program set forth in the facilities plan. In addition, the plan should include the following:

a. A schedule for land clearing and grading in relation to the corresponding schedule for each structure to be built. If at all possible, the clearing should immediately precede the construction activity.

b. Specifications for temporary and permanent measures to be used for controlling erosion and sediment including a schedule and specific location for each measure.

c. A separate list containing: (1) chronological completion dates for each temporary and permanent measure for controlling erosion and sediment; (2) location, type and purpose for each measure; and (3) dates when those temporary measures will be removed or replaced. This list will serve as a guide for contractors as well as field inspectors during and after construction.

d. Appropriate maintenance procedures for each sediment control structure should be specified in detail in the operation and maintenance manual required as part of the construction grant.

3. Construction (Step 3)

The State, EPA and other appropriate local, State and Federal agencies should coordinate their efforts to effectively carry out the inspections by using the guide contained in the plans and specifications. The objective of these inspections is not only to ensure compliance, but also to make sure that necessary corrective steps are taken where it is found that (1) sediment control measures originally specified were not adequate, and (2) additional measures are needed for problems not anticipated in the design phase.

Post Construction:

The final project inspection should make sure that all temporary sediment control measures are removed or replaced with permanent measures and all permanent structures are built as specified.

Attachment B

References

1. U.S. Environmental Protection Agency, Nonpoint Source Control Guidance, Construction Activities, U.S. EPA, Office of Water Planning & Standards, Washington, D.C. 20460 (December 1976).

2. U.S. Environmental Protection Agency, Guidelines for Erosion and Sediment Control Planning and Implementation, EPA R27 2015, U.S. Government Printing Office, Washington, D.C. (August 1972).

3. Meyer, L. Donald and Kramer, Larry A., "Erosion Equations Predict Land Slope Development," Agricultural Engineering, Vol. 50, No. 9 (September 1969).

4. Meyer, L.D., "Reducing Sediment Pollution by Erosion Control on Construction Sites," paper presented at Seventh American Water Resources Conference, Washington, D.C. (October 1971).

5. Meyer, L.D., et al., "Erosion Runoff and Revegetation of Denuded Construction Sites," Transactions of the American Society of Agricultural Engineers, Vol. 14, No. 1, St. Joseph, Michigan (1971).

6. Meyer, L.D., et al., "Mulch Rates for Erosion Control on Steep Slopes," Soil Science Society of American Proceedings, Vol. 34, No. 6, Madison, Wisconsin (November/December 1970).

7. Wischmeier, W.H., et al., "A Soil Erodibility Nomograph for Farmland and Construction Sites." Journal of Soil and Water Conservation (September/October 1971).

8. U.S. Environmental Protection Agency, Office of Water Program Operations, Control of Erosion and Sediment Deposition from Construction of Highways and Land Development, U.S. Government Printing Office, Washington, D.C. (1971).

9. U.S. Department of the Interior, Federal Water Quality Administration, Urban Soil Erosion and Sediment Control, U.S. Government Printing Office, Washington, D.C. (1970).

10. U.S. Environmental Protection Agency, Processes, Procedures, and Methods to Control Pollution Resulting from All Construction Activity, EPA 430/9-73-007, U.S. EPA, Office of Air and Water Programs, Washington, D.C. 20460 (October 1973).

11. U.S. Environmental Protection Agency, Method to Control Fine-Grained Sediments Resulting from Construction Activity, EPA 440/9-76-026, Office of Water Planning and Standards, Washington, D.C. (December 1976).

12. Local Soil and Water Conservation District Technical Guides on file at each Soil Conservation Service Office.

13. U.S. Environmental Protection Agency, Methods of Quickly Vegetating Soils of Low Productivity, Construction Activities, EPA 440/9-75-006, Office of Water Planning and Standards, Washington, D.C. (July 1975).

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

17 FEB 1978

Construction Grants
Program Requirements Memorandum
PRM No. 78-4

SUBJECT: Grant Eligibility of Land Acquired for Storage in Land Treatment Systems

FROM: John T. Rhett, Deputy Assistant Administrator for Water Program Operations (WH-546) John T Rhett

TO: Regional Administrators
Regions I thru X

PURPOSE

This memorandum provides additional guidance concerning grant eligibility of land acquired by purchase, leasing, or easements for use in land treatment systems.

DISCUSSION

The Agency has previously issued three PRM's on acquiring land for use in land treatment of wastewaters and sludges. PRM 75-25 (formerly PGM-49) covers the interpretation of the eligibility of land acquisition costs for land treatment processes (wastewaters). PRM 75-39 (formerly PGM-67) covers the eligibility of land acquisition costs for the ultimate disposal of residues from wastewater treatment processes (sludges). PRM 77-5 covers the eligiblity of leasing or easements in lieu of fee simple purchase for use in either wastewater treatment alternatives or sludge management systems. The Clean Water Act of 1977 (P.L. 95-217) requires changes in Section 35.905-23 (definition of treatment works) and 35.940-3 (costs allowable, if approved) of the construction grants regulations (40 CFR Part 35). These changes in the construction grants regulations require a change in eligibility of land costs as described by PRM 75-25, but do not affect PRM 75-39 or PRM 77-5.

POLICY

The Federal Water Pollution Control Act Amendments of 1977 (P.L. 95-217) make the land that will be used for storage of treated wastewater in land treatment systems prior to land application an eligible cost as of December 27, 1977. Previously, the cost of land for the temporary storage of effluent was not eligible (PRM 75-25). Acquirement of land for storage purposes must be by purchase rather than lease or easement.

There are two approaches for providing temporary storage that will be cost eligible.

1. The cost of land will be eligible for all ponds constructed specifically to meet storage needs due to climate or a seasonal imbalance between wastewater supply and application schedules. The period and total volume of storage provided should be commensurate with the discussion in Section 5.3 (pages 5-30 thru 5-38) of the Design Manual on Land Treatment of Municipal Wastewater (EPA 625/1-77-008). These storage ponds should be designed with the maximum depth appropriate for site conditions.

2. All or part of the land will be eligible for ponds which are constructed for combination treatment and storage purposes if such combination ponds meet the definitions and criteria as listed in (a) through (d) below:

   (a) Storage volume is defined as that portion of the pond designed to provide the total storage needs due to climate or a seasonal imbalance between wastewater supply and application schedules as for (1) above. Storage volume could represent the entire volume of a separate cell or that portion above the treatment volume in a combined treatment/storage cell.

   (b) Treatment volume is that portion of the pond specifically designed for biological stabilization of the wastewater. It may be the entire volume of a treatment cell or the depth below the liquid level that was designed for treatment in a combined treatment/storage cell.

   (c) If the volume provided for storage is greater than the volume provided for treatment in any cell of the pond, then the total land area for that cell is eligible.

   (d) If the volume provided for storage is equal to or less than the volume provided for treatment in any cell of the pond, then the eligible area will be determined as the ratio of the storage volume to the total volume of that cell.

IMPLEMENTING PROCEDURE

The provisions of this program requirements memorandum apply to all projects which had not been given Agency approval of the Step 1 facilities plan as of December 27, 1977. These provisions supplement PRM #75-25, which remains in effect.

REFERENCES

Program Requirements Memorandum 75-25 of July 18, 1975 (formerly PGM-49)
Program Requirements Memorandum 75-39 of April 2, 1975 (formerly PGM-67)
Program Requirements Memorandum 77-5 of December 15, 1976
40 CFR 35.905-23
40 CFR 35.940-3
EPA 625/1-77-008: Land Treatment of Municipal Wastewater

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

FEB 13 1978

OFFICE OF WATER AND
HAZARDOUS MATERIALS

Construction Grants
Program Requirements Memorandum
PRM No. 78-8

SUBJECT: Rejection of All Bids: Guidance for EPA Concurrence Function

FROM: John T. Rhett
Deputy Assistant Administrator
for Water Program Operations (WH-546)

John T Rhett

Joseph M. Zorc
Assistant General Counsel, Grants (A-134)

Joseph M. Zorc

TO: Water Division Directors (I-X)
Regional Counsels (I-X)

PURPOSE:

The purpose of this PRM is to set forth a revised Agency procedure for handling a proposed rejection by a grantee of all bids on Step 3 projects.

POLICY:

It is the policy of the Environmental Protection Agency that procurement for Step 3 construction contracts will be undertaken in a manner to best achieve free and open competition. 40 CFR § 35.936-3. Achievement of that Federal interest requires a standard which inhibits rejection of all bids and resolicitation. While the Environmental Protection Agency regulations provide that a grantee may reserve the right to reject all bids [40 CFR § 35.938-4(h)(2)], the exercise of that right is contingent upon a grantee's demonstration of good cause for that proposed action. Any good cause demonstration must reflect that the public interest is best served by rejection of all bids, considering applicable Environmental Protection Agency requirements. Additionally, the absence of good cause for rejection of all bids is incompatible with the good faith efforts of all associated parties within the grants process as well as self-defeating in terms of local water pollution abatement efforts.

DISCUSSION:

The Environmental Protection Agency has established a concurrence function, regarding a grantee's proposed rejection of all bids on Step 3 construction grant projects, to determine whether adequate good cause is demonstrated. The following criteria are representative of circumstances in which good cause for rejection of all bids may be found:

(1) The specifications are ambiguous, inadequate, restrictive, or otherwise deficient and an addendum to the original invitation for bids is no longer possible.

(2) The needs of the grantee have changed and the change could not be imposed upon bidders consistent with applicable procurement requirements.

(3) The specification requirement(s) is(are) determined not to be necessary.

(4) The bids received indicate that the grantee's quality requirements were overstated.

(5) The amounts of all acceptable bids (i.e., responsive and responsible) are reasonable but the grantee is unable to fund the non-Federal share of project costs associated with the lowest acceptable bid (variables to consider, in this regard, are the financial capability of the grantee, the dollar amounts of the bids and their percent over the engineer's estimate).

(6) The amounts of all otherwise acceptable bids (i.e., responsive and responsible) are unreasonable. This is an obvious matter for subjective judgment including some deference to the procuring entity and concerns various factors among which is the validity of the engineer's estimate.

(7) The bids received failed to provide sufficient competition to insure fair prices.

(8) The bids:

- (a) were not independently arrived at in open competition;
- (b) were collusive; or
- (c) were submitted in bad faith.

(9) Applicable Federal law or policy (for example, the National Environmental Policy Act, 42 U.S.C. § 4321 _et seq._) requires delay or further study of the project.

Good cause for rejection of all bids may not be found where the following is evidenced:

(1) Litigation is instituted concerning contract award, although litigation may prove a proper ground for rejection of all bids where prolonged.

(2) The specification requirements are relaxed by a grantee and the relaxation would not materially affect competition and would result in only minor savings.

(3) The invitation for bids contained omissions, errors or ambiguities which did not adversely affect competition, if:

(a) award would result in a binding contract concerning all material requirements;

(b) performance would satisfy the needs of the grantee; and

(c) the rules of formal advertising, as contained in Agency regulation, or fundamental principles of procurement necessary to insure free and open competition, would not be violated.

(4) A local or in-State bidder has not submitted the low bid.

GRANT ELIGIBILITY:

Nothing in this PRM prohibits a Regional Administrator, in recognition of a paramount Federal interest, from limiting the amount of grant assistance on any resolicitation to the Federal share of the lowest bid which could have been accepted by a grantee, or from requiring bid rejection.

PROCEDURE:

The above criteria should provide sufficient guidance to permit each Regional Water Division to establish procedures for review of proposed rejections of all bids and concurrence or nonconcurrence on the part of the Agency. Additional review by Headquarters, on a case-by-case basis, is not a requirement for the performance of the Agency concurrence function and generally need not be sought. Advice must be requested from Regional Counsels in matters concerning rejection of all bids. Headquarters should be involved in cases which concern issues of policy definition. A copy of the Regional Office memorandum or other record of each concurrence/nonconcurrence will be forwarded to both the Headquarters Office of Water Program Operations, Municipal Construction Division (WH-547) and the Assistant General Counsel, Grants (A-134).

Generally, after rejection of all bids the plans and specifications or bidding documents will require modification to assure the correction of the circumstances which led to rejection. In no case will negotiation with a low bidder be utilized in lieu of rejection of all bids and readvertising in order for the grantee to get within budget.

Cancellation:

This PRM cancels Harold P. Cahill's memorandum of September 1, 1976, (subjet: "Rejection of Bids on Step III Construction Grant Projects:), and that of Jack Washburn, dated November 6, 1976, (subject: "Headquarters Concurrence with Regional Offices' Recommendation on Rejection of Bids by Grantees"). The policy and procedures established in this memorandum are effective immediately.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

May 11, 1978

Construction Grants
Program Requirements Memorandum
PRM No. 78-11

SUBJECT: Toxicity of Chemical Grouts for Sewer Rehabilitation

FROM: John T. Rhett, Deputy Assistant Administrator /s/
for Water Program Operations (WH-546)

TO: Regional Administrators
Regions I thru X

Purpose

This Program Requirements Memorandum provides an alert on the potential health hazards associated with the field application of a major chemical grout used in correcting sewer infiltration. The grouting material is AM-9 manufactured by American Cyanamid. Your immediate action is requested in distributing this memorandum and the attachment to all Construction Grant Program grantees.

Discussion

In applying the AM-9 grout, a catalyst containing dimethyl amino propionitrile (DMAPN) is used. On April 7, 1978, OSHA issued a health hazard alert concerning DMAPN. It stated, "There is no current permissible exposure limit. It is unknown at the present time if there is any safe limit for human exposure to ESN (a trademark name for DMAPN). The use of the material has been discontinued in plants in both Maryland and Massachusetts. Accordingly, based on serious and immediate adverse human health effects already evident it is imperative that worker exposure to ESN and its components be completely avoided."

The OSHA alert was based on operations involved in the manufacture of polyurethane foam. However, on the basis of this alert, the Washington Metropolitan Transit Authority recently requested that all future use of this produce (DMAPN) be stopped immediately and the product be removed from all of its subway construction sites. DMAPN had previously been used in grouting operations in subway tunnels.

Action

1. Distribute this memorandum and the attached OSHA alert to the State Agencies in your region and to all grantees who are or may potentially be using the above chemical grouts in sewer rehabilitation projects.

2. There are already efforts underway to continue grouting with AM-9 using a different catalyst agent. However, we understand that the production of AM-9 will be discontinued as of July 31, 1978. In view of this and the health related concerns discussed above, please assess the impact of these events on the infiltration/inflow program as it relates to the overall management of the Construction Grant Program. You will be notified as soon as additional information becomes available. Please keep me advised of your findings and conclusions.

OSHA HEALTH HAZARD ALERT: NIAX CATALYST ESN

It has come to OSHA's attention that your firm has used and may still be using NIAX catalyst ESN (registered TM, Union Carbide). ESN is composed of two chemicals: (1) dimethyl amino propionitrile, and (2) BIS-2, dimethyl amino ethyl ether. The material is chiefly used as a catalyst in certain polyurethane foam production operations.

There have been documented reports on serious adverse health effects among male and female employees exposed to ESN in plants in both Maryland and Massachusetts. The most striking symptoms uniformly reported by afflicted workers are those of urinary dysfunction. In one Maryland plant 69 of 101 workers questioned complained of difficulty starting urination, pain and burning on voiding, incomplete emptying of the bladder, slowness in expelling urine, and other urinary problems. There have also been employee reports of impotence and sexual difficulties. A few individuals have received urological surgery. There is evidence that for a smaller number of employees toxic effects of ESN include damage to the nervous system (peripheral neuropathy) with symptoms of muscle weakness, loss of balance and coordination, numbness, tingling, and loss of feelings. ESN exposure may also cause liver dysfunction.

Employees have reported symptoms of toxic effects after as few as three of ESN exposure. In addition to these immediate urinary and neurological effects, exposure to ESN can lead to serious and permanent health damage to the afflicted worker.

The material has moderate to severe toxicity by the skin, inhalation, and oral routes of administration in acute animal studies. OSHA has not found any animal toxicology data on long-term or chronic effects of ESN exposure.

There is no current permissible exposure limit. It is unknown at the present time if there is any safe limit for human exposure to ESN. The use of the material has been discontinued in plants in both Maryland and Massachusetts. Accordingly, based on the serious and immediate adverse human health effects already evident, it is imperative that worker exposure to ESN and its components be completely avoided. It is also essential that employers take the following actions regarding ESN:

1) Inform all employees of the possible adverse health effects of exposure.

2) Provide all employees with a copy of this telegram.

3) Advise all employees with symptoms described in this notice to see a physician and show him/her this message. The physician should be made aware that the urological complaints have been mistaken for non-occupationally caused prostatic or bladder disease.

4) Urge all employees with symptoms to report them to OSHA, to their bargaining agent if there is one, and to the corporate medical department if any.

5) Advise the corporate medical department or other designated physician to inform OSHA promptly of all employee reports of symptoms described above.

Those involved should contact the OSHA regional administrator to convey all employee reports of symptoms. A complete list of OSHA regional administrators is attached as an appendix to this document. Physicians and others seeking more technical or medical information on health effects of ESN should call the OSHA regional administrator for referral. Further, since serious physical harm to employees has taken place after short periods of exposure to ESN, OSHA compliance officers have been directed to institute imminent danger proceedings where appropriate measures have not been taken to eliminate this exposure.

Workers exposed to the individual components of ESN, alone or in combination with other chemical compounds, should be investigated for similar adverse health effects, with particular reference to urinary tract symptoms.

Eula Bingham
Assistant Secretary for Occupational
Safety and Health

OSHA Regional Administrators

1.	Region I - Gilbert Saulter 617-223-5535	(CT, ME, MA, RI, VT)
2.	Region II - Alfred Barden 212-399-5941	(NJ, NY, PR, VI)
3.	Region III - David Rhone 215-596-1206	(DE, DC, MD, PA, VA, WV)
4.	Region IV - Allan McMillan 404-881-2305	(AL, FL, GA, KY, MS, NC, SC, TN)
5.	Region V - Berry White 312-353-4716	(IL, IN, MI, MN, OH, WI)
6.	Region VI - Robert Wendell 214-749-3473	(AR, LA, NM, OK, TX)
7.	Region VII - Vernon Strahm 816-374-5048	(IA, KS, MO, NB)
8.	Region VIII - Curtis Foster 303-837-3416	(CO, MT, ND, SD, UT, WY)
9.	Region IX - Gabrel Gillotti 415-556-0586	(AZ, CA, GU, HI, NV, Am.Sam., Trust. Terr., N.Mariannas)
10.	Region X - James Lake 206-442-5930	(AK, ID, OR, WA)

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUN 12 1978

OFFICE OF WATER AND
HAZARDOUS MATERIALS

CONSTRUCTION GRANTS
Program Requirements Memorandum
PRM #78-12

SUBJECT: Preconstruction Lag Management

FROM: John T. Rhett, Deputy Assistant Administrator for Water Program Operations (WH-546) John T. Rhett

TO: Regional Administrators

ATTN: Water Division Directors

PURPOSE:

The purpose of this memorandum is to establish Agency policy regarding the management of preconstruction lags.

DISCUSSION:

Section 35.935-9 of the current construction grant regulations states that, if construction of a Step 3 project is not initiated within one year after award, grant assistance will be terminated. This section also provides that the Regional Administrator may defer such termination for not more than six additional months, if there is good cause for the delay in initiation of construction.

Because of a continuing history of failure by grantees to initiate construction on their projects within a reasonable period of time following award of the Step 3 grant, a program for the management of these lags must be decisive so as to minimize the number and value of projects in preconstruction over an extended period. Measures, such as anticipating problems early, having a plan of control, taking the lead in overcoming delays, and emphasizing to the grantee that his grant may be terminated or annulled and an enforcement action initiated must be included in such a program.

The proposed technical amendments published in the FEDERAL REGISTER on June 2, 1978, has revised Section 35.935-9 to read as follows:

§35.935-9 Project initiation and completion.

(a) The grantee agrees to expeditiously initiate and complete the Step 1, 2 or 3 project, or cause it to be constructed and completed, in accordance with the grant agreement and application, including any project schedule, approved by the Regional Administrator. Failure of the grantee to promptly initiate Step 1, 2 or 3 project construction may result in annulment or termination of the grant.

(b) No date reflected in the grant agreement, or in the project completion schedule, or extension of any such date, shall be deemed to modify any compliance date established in an NPDES permit. It is the grantee's obligation to request any required modification of applicable permit terms or other enforceable requirements that may be affected by an extension.

(c) The invitation for bids for Step 3 project work is expected to be issued promptly after grant award. Generally this action should occur within 90 to 120 days after award unless compliance with State or local laws requires a longer period of time. The Regional Administrator shall annul or terminate the grant if initiation of Step 3 construction, including all significant elements of project work, has not occurred within 12 months of the award of Step 3 grant assistance (or approval of plans and specifications, in the case of a Step 2+3 grant). However, the Regional Administrator may defer (in writing) the annulment or termination for not more than 6 additional months if:

(1) The grantee has applied for and justified the extension in writing to the Regional Administrator;

(2) The grantee has given written notice of the request for extension to the NPDES permit authority;

(3) The Regional Administrator determines that there is good cause for the delay in initiation of project construction; and

(4) The State agency concurs in the extension.

POLICY:

Beginning September 1, 1978, to obtain a deviation from 40 CFR 35.935-9, for deferment beyond 18 months, it shall be Environmental Protection Agency (EPA) policy that the grantee must document that the delays are due to circumstances beyond his control and provide certification that construction will be initiated by the deferment date in the deviation request. Such dates must be within a brief and strictly limited period of time.

No determination should be made by the Regional Administrator to extend the required date for initiation of construction of a project, or any segment, until prior approval has been obtained from the State agency. If an extension of time is not approved by either EPA or the State, the EPA Regional Office should take immediate action to terminate or annul the grant. The funds can then be utilized for other projects within the State, consistent with the State project priority system.

IMPLEMENTATION:

Regional Office personnel shall coordinate all actions with the Enforcement Division and Permits Branch in implementing the above policy as follows:

1. Immediately review the current construction lag report for all projects with a construction lag in excess of 12 months without an approved extension and in excess of 18 months without a granted deviation. Select projects for termination or annulment. For those projects which the Regional Administrator has assured himself will be under construction in a reasonable amount of time, an official extension may be granted or deviation requested, as appropriate. Other projects should be considered for termination or annulment and enforcement action.

2. Immediately review all projects which have not gone to construction by the end of six months after Step 3 grant award and classify them as being in "Delayed Status." Immediately relay this information to the Director, Enforcement Division.

3. Immediately review all projects which have not gone to construction within 120 days of Step 3 grant award and determine if invitations for bids have been published. Classify those projects which have not been advertised as being in "Delayed Status" and relay this information to the Director, Enforcement Division.

4. Continually maintain the Preconstruction Lag Report in detail. Instructions for maintaining the Preconstruction Lag Report are contained in References B & C below.

5. Continually monitor all projects on the Preconstruction Lag Report to spot potential problem projects.

6. At the time that projects are classified as being in "Delayed Status," require detailed preconstruction schedules from grantees and aggressively pursue the implementation of these schedules. Monthly, Area Program Managers in Headquarters will determine the status of all "Delayed Status" projects, either by telephone or by visits to the Regional Offices. Area Program Managers will also analyze the Preconstruction Lag Report and discuss problem aspects with the Regions.

7. In the seventh month after Step 3 grant award, advise the grantee that a very real potential exists, both for the termination or annulment of his project at the end of one year and for possible enforcement action. Advise the grantee to review his alternative approaches for solving the problem which is delaying construction. For projects delayed by circumstances under the grantee's control, advise the regional Enforcement Division of the situation, including a recommendation for action from the Water Division.

8. Between the seventh and twelfth month, determine if "Delayed Status" projects can be brought to construction. If construction cannot be started before the end of the twelfth month and, if it is reasonably assured that construction can be started within a six month extension period, obtain from the grantee the documentation required by the above policy.

9. At the end of the twelfth month, terminate or annul "Delayed Status" grants in accordance with the above policy if documentation does not justify extension. Refer grantee to the Enforcement Division for more extensive enforcement action.

REFERENCES

A. 40 CFR 35.935-9, Project Completion.

B. Memorandum to Regional Administrators from John T. Rhett, "Construction Grants Projects Not Yet Under Construction," November 5, 1976.

C. Memorandum to Water Division Directors from John T. Rhett, "Preconstruction Status Report," May 25, 1977.

D. POM 77-12, "Management of Preconstruction Phase of Step 3 Grants," June 21, 1977.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

OCT 23 1978

Construction Grants
Program Requirements Memorandum
PRM No. 79-1

Subject: Safety Requirements for the Design and Operation of Chlorination Facilities Using Gaseous Chlorine

From: John T. Rhett, Deputy Assistant Administrator for Water Program Operations (WH-546)
John T Rhett

To: Regional Administrators (I-X)
Attn: Water Division Directors

Purpose:

This memorandum establishes the policy pertaining to safety requirements for the design and operation of chlorination facilities utilizing gaseous chlorine.

While many engineering considerations and operational practices with regard to chlorine handling are site specific, a number of significant design specifications and operational procedures should be required as minimum acceptable practice. There are numerous publications that provide detailed information pertaining to this subject, including those listed in Attachment B. This memorandum provides guidelines and general principles to be used in the design and operation of chlorination facilities using gaseous chlorine.

Discussion:

Gaseous chlorine refers to chlorine purchased in its elemental form, occurring in the gaseous or liquid state. It is supplied commercially in pressurized containers sized to contain either 100 pounds, 150 pounds or 2,000 pounds of chlorine. In addition, chlorine can be purchased in single unit and multi-unit railroad tank cars, as well as tank trucks.

Chlorine is a respiratory irritant, and under conditions of sufficient concentration and exposure, can cause death by suffocation. Chlorine, especially when combined with even small amounts of water, is highly corrosive, and can cause severe burns when brought into contact with skin and eyes. Unfortunately, the toxic and corrosive effects of chlorine were recently demonstrated by the two publicized railroad tank car derailments and their subsequent after effects.

The on-going construction grants program will continue to generate significant construction of wastewater treatment facilities throughout the country. Chlorination continues to represent the most commonly used method of disinfection for sewage, and consequently many new treatment facilities will include provisions for chlorinating treated effluent prior to discharge. As a result, a major part of EPA's overall responsibility is ensuring that safe chlorination practices are implemented.

EPA policy is designed to ensure that:

1. Chlorination systems are designed to prevent chlorine leaks and to minimize operator and local resident exposure should leaks occur.

2. Chlorine leaks that do occur are handled safely, quickly, and with minimal environmental exposure.

Policy:

Attachment A is guidance for the design and operation of safe chlorination facilities. It is intended that in reviewing plans and specifications and operation and maintenance manuals for those projects incorporating chlorination processes, Sections I and II of Attachment A be used as a technical guide and basis for minimum adequacy in safety considerations. The information contained in the guidance was developed to serve as part of the overall criteria applicable to the design and operation of such facilities. While it is believed that complying with the guidance will substantially reduce chlorine hazards which can be potentially dangerous to plant personnel and nearby residents, it is recommended that the guidance in this PRM be used to supplement other applicable information on chlorination facilities.

Implementation:

The measures specified in this memorandum are required for all projects that have not yet received Step 3 grants by the date of this memorandum. In addition, projects that have already received Step 3 grants should incorporate the sections under operation and maintenance in the O&M manual. Where practical, current Step 3 projects should be encouraged to make revisions to their designs to comply with the measures specified herein.

Attachments

ATTACHMENT A

Procedure for the Safety in the Design and Operation of Chlorine Facilities

This guidance contains a detailed procedure which represents good engineering practices for the safety in the design and operation of chlorination facilities. Because it is not the intent of the guidance to modify or replace any appropriate safety requirements and regulations published by the Occupational Safety and Health Administration (OSHA), it is recommended that the guidance be used to supplement the OSHA and any other appropriate safety requirements.

I. Design of Gaseous Chlorine Facilities

A. If gas chlorination equipment and chlorine cylinders are to be installed or stored in a building used for other purposes, a gas-tight partition should separate the chlorination room from any other portion of the building. Doors to this room should open only to the outside of the building, and should be equipped with panic hardware. Such rooms should be at ground level, and should permit easy access to all equipment; the chlorine storage area(s) should be separated from the chlorine feed area(s).

B. A clear glass, gas-tight window should be installed in an exterior door or interior wall of the chlorination room to permit the chlorinator(s) to be viewed without entering the room.

C. Chlorination rooms should be equipped with heating and ventilating equipment designed to maintain the room(s) containing the chlorine containers at approximately 18-21°C (65-70°F) and the room(s) containing the chlorinator feed equipment at a temperature of 5-10°F higher.

D. Containers (except insulated rail or cargo tanks) should be shielded from direct sunlight or from overheating above 60°C (140°F) any source, either while in storage or in use. Pairs of level rails or properly designed cradles should be provided for storing one ton cylinders.

E. Forced mechanical ventilation should be included that will provide a complete air change at least every 1-4 minutes. Because chlorine gas is heavier than air, location of air inlets and outlets should be carefully considered to ensure that the entire room will be thoroughly ventilated. For example, in the exhaust ventilation system, the exhaust outlet should be located near the floor, with the discharge being positioned outside of the building at a point where it will not contaminate the air inlet to any buildings or inhabited areas. The fresh air inlet should be located at the opposite end of the room from the exhaust outlet, to facilitate complete air replacement.

F. Exhaust equipment should be automatically activated by external light switches. That is, an operator should be able to turn the lights on outside of the chlorination room and thereby activate the ventilation system prior to entering the enclosed area. Other automatic systems, including door-activated mechanisms, should also be considered.

G. Emergency showers and eye baths should be located near, but external to, the chlorination facilities.

H. For facilities having a design hydraulic capacity of five million gallons per day or more, an automatic chlorine detection system should be included as part of the chlorination facility. The detection system should sound alarms and activate flashing lights that are audible and visible within the POTW. Connection of the alarm system to the local police station, POTW operator's area, or both, is also recommended where practical. Consideration of such detection and alarm systems should also be given in the case of smaller facilities, where the potential benefits are sufficient to warrant the additional cost and associated increase in operational complexity.

II. Operation and Maintenance

The following procedures should be included in operation and maintenance manuals for treatment facilities which incorporate chlorination processes. While the following criteria are related primarily to the operation and maintenance of chlorination systems, they should also be read in the context of their applicability to the design of treatment plants.

A. Loading and Unloading of Chlorine

1. DOT regulations (174.560) provide that single-unit railroad tank cars must be unloaded on a private track. This requirement applies to all EPA supported projects.

2. Whenever practicable, single and multi-unit tank cars should be delivered at a deadend siding(s) used only for chlorine delivery, with insurance that the tracks are level. The car(s) should be protected by a locked derail, a closed and locked switch, or preferably both.

3. Railway flat cars delivering one ton containers should also be delivered on a special siding assigned to chlorine unloading only.

4. Chains, rope slings, or magnetic hoists should never be used. When cylinders are to be lifted, forklift trucks or hoisting equipment with special cradles or carriers designed for chlorine equipment should be utilized.

5. Tank barge unloading facilities should be in compliance with the Army Corps of Engineers and Coast Guard Regulations.

B. Handling of Chlorine Containers

1. One ton cylinders should be stored on properly designed cradles or pairs of level rails. Chocks should be placed to prevent the containers from rolling when unattended.

2. 100 and 150 pound cylinders should be secured with safety chains in storage and during transport.

3. Containers should never be piled on top of one another.

4. Containers should be stored in a manner that will prevent them from being hit by vehicles or other heavy objects.

5. Chlorine should not be stored with other compressed gases.

6. Empty containers should be so tagged, and should be stored separately from full containers.

7. Cylinders should be used in the order in which they are received, to prevent valve packing from becoming dry and developing leaks.

8. Only approved tools designed for use with chlorine containers should be used. For example, hand trucks specifically designed for 100 and 150 pound cylinders should be used instead of rolling them on the rim.

9. Chlorine cylinder emergency repair kits should be readily available.

C. Leak Detection and Emergency Procedures

1. Each POTW should have a formal written set of emergency procedures that includes the items discussed below, prior to startup of the chlorination facilities. In addition, operator's manual must include pre-planned procedures in the event of a catastrophic leak or container rupture.

2. Self-contained positive pressure helmets, with their own compressed air supply and full facepiece, should be available for emergency use. The canister type gas mask is specifically not recommended. The helmets should be located at readily accessible points, away from the area(s) likely to be contaminated with chlorine gas. Spare air supply cylinders should also be on site for use during prolonged emergencies.

Helmets and breathing air supply tanks should be routinely inspected and maintained in good condition. They should be cleaned after each use, and also cleaned routinely at regular intervals. When needed, air supply tanks should be refilled at stations where proper air compressor equipment is used to filter out oil in a contaminated air environment.

Specifications for properly designed positive pressure helmets for chlorine service can be obtained from the U.S. Bureau of Mines, OSHA, or NIOSH. In addition, potential users of these helmets, as well as users of other emergency equipment, should have formal training in their use and should also be required to have regular practice sessions.

3. A strong solution of aqueous ammonia (18° Baume or higher) should be available for use in locating the source of leaks. Dense white clouds of ammonium chloride are formed by the reaction of the ammonia and chlorine, thus confirming the source of the chlorine leak.

4. Repair of any chlorine leaks should be performed by at least two people wearing self-contained air breathing equipment. If such repairs must be made below grade, persons entering the area must also wear safety harnesses which are connected to ropes extending to a higher level where additional people are stationed to assist in emergency rescue operations.

5. Piping and valves in chlorine rooms should be color coded and properly labeled for rapid identification.

6. If a container is leaking chlorine, it should be turned, if possible, so that gas instead of liquid escapes. The quantity of chlorine that escapes from a gas leak is about one-fifteenth the amount that escapes from a liquid leak through the same size hole.

7. If possible, a leaking container should be moved to an isolated spot where it will do the least harm.

8. Never immerse or throw a leaking chlorine container into a body of water. The leak will be aggravated and the container may float when still partially full of liquid chlorine, allowing gas evolution at the surface.

9. Emergency kits should be readily available for the quick repair of chlorine leaks. Information on emergency kits is available from the Chlorine Institute, New York, NY (see Reference 1).

10. In the event of an emergency, technical assistance can be obtained by calling CHEMTREC (Manufacturing Chemists Association, Chemical Transportation Emergency Center) at 800/424-9300. This is a 24-hour toll-free service.

ATTACHMENT B

REFERENCES

1. "Chlorine Manual," The Chlorine Institute, Inc. 342 Madison Avenue, New York, NY, December, 1972.

2. "WPCF Manual of Practice No. 1 - Safety in Wastewater Works," Water Pollution Control Federation, 1975.

3. "WPCF Manual of Practice No. 4 - Chlorination of Wastewater," Water Pollution Control Federation, 1976.

4. "WPCF Manual of Practice No. 8 - Wastewater Treatment Plant Design," Water Pollution Control Federation, 1977.

5. "Liquid Chlorine" Technical and Engineering Service Bulletin No. 7, Allied Chemical, Morristown, NJ.

6. "Chemical Safety Data Sheet SD-80, Properties and Essential Information for Safe Handling and use of Chlorine," Manufacturing Chemists Association, 1970.

7. "Standards for Waste Treatment Works, Municipal Sewerage Facilities," New York State Department of Environmental Conservation, 1970.

8. "Chlorine Handbook," Diamond Shamrock Chemical Company, 1976.

9. "Dow Chlorine Handbook," Dow Chemical U.S.A., 1975.

10. Sax, Irving N., *Dangerous Properties of Industrial Materials*, Van Nostrand Reinhold Company, 1975.

11. White, George C., *Handbook Of Chlorination*, Van Nostrand Reinhold Company, 1972.

12. "Hazardous Materials Regulations of the Department of Transportation, Including Specifications for Shipping Containers," R.M. Grazianos Tariff Publishing.

13. "Chlorine Detector Saves a Life," *Public Works*, March, 1978.

14. "Safe Handling of Compressed Gases and Containers," Compressed Gas Association, Inc., 1974.

15. "Supplement to Federal Guidelines: Design, Operation and Maintenance of Wastewater Treatment Facilities," Technical Bulletin No. D-71-1, U.S. Environmental Protection Agency, September, 1970.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

NOV 13 1978

OFFICE OF WATER AND
HAZARDOUS MATERIALS

CONSTRUCTION GRANTS
PROGRAM REQUIREMENTS MEMORANDUM
PRM No. 79-2

SUBJECT: Royalties for Use of or for Rights in Patents

FROM: John T. Rhett, Deputy Assistant Administrator John T. Rhett
for Water Program Operations (WH-546)

Frances E. Phillips, Associate General Counsel Fran Phillips
Grants, Contracts and General Administration (A-134)

To: Regional Administrators
Attn: Water Division Directors

Purpose

This memorandum sets forth Agency policy and procedures concerning the allowable cost associated with the procurement of the right to use, or the rights in, a patented product, apparatus or process which is necessary for the proper performance of a construction grant agreement or subagreement thereto.

Discussion

Questions have been raised about the allowability of royalties for the use of or for rights in patents. Royalties are itemized costs or charges in the nature of patent royalties, license fees, patent or license amortization costs, or the like. Such royalties are paid to a patent licensor either by the grantee or by a contractor, who in turn separately charges the grantee for this actual cost.

This memorandum addresses the payment of royalties during the construction of the waste treatment works, as distinguished from the grantee's periodic payment of royalties for the right to operate under a patent. Periodic payments are operating costs and are not within the purview of this memorandum. Any part of a license fee, beyond a mere royalty, which can be attributed to services rendered by the licensor is also beyond the purview of this memorandum.

There are at least two occasions when the grantee may be obligated to pay a royalty for the use of or for rights in patents:

1. The treatment works design includes a patented product, apparatus, or process, or

2. A patented product, apparatus or process may be necessary for the proper performance of a subagreement to a construction grant.

Policy

Royalties for the use of or for rights in patents, are allowable costs within the limits of the principles and procedures contained herein.

Implementation

1. The grantee shall report to the EPA Project Officer, with copies for the EPA Regional Counsel, the following information, if applicable, for each item of royalty in excess of $1,000 which the grantee will be obligated to pay as an actual cost:

   a. Name and address of licensor;

   b. Date of license agreement;

   c. Patent Numbers;

   d. Brief description, including any part or model numbers of each contract product, apparatus or process which the separate royalty is payable;

   e. Percentage or dollar rate or royalty per unit or other method of determining the royalty;

   f. Unit price of contract items;

   g. Number of units;

   h. Total dollar amount of royalties; and

   i. Current license agreements.

2. Prior to selecting a patented product, apparatus, or process for the treatment works, on which an item of royalty must be paid, the grantee must consider:

   a. The necessity and reasonableness of the royalty.

b. The royalty in any cost-effective analysis and as an evaluation factor in any bid analysis;

c. The use of performance type specifications for competitive procurement of a royalty-free product, apparatus or process; and

d. The use of Step 3 bid alternatives to each proposed patented product, apparatus, or process on which a royalty must be paid.

3. The grantee shall obtain and submit to the EPA Project Officer, with copies for the EPA Regional Counsel, as soon as the patented product, apparatus or process, on which a royalty must be paid, has been proposed in the facilities plan or design, a copy of the proposed license agreement.

4. Royalties on a patent necessary for the proper performance of the grant agreement or any subagreement thereto and applicable to grant products, apparatus or processes, are allowable unless:

a. The Federal government has title to the patent or a royalty fee license with the right to sub-license the grantee;

b. The patent has been adjudicated to be invalid, or has been administratively determined to be invalid by an Agency of the Federal government;

c. The patent or license agreement is considered to be unenforceable by the grantee or an Agency of the Federal government;

d. The patent either has expired or will expire prior to the incurrence, by the grantee, of any possible infringement liability.

e. The grantee has received from a patent attorney, an opinion that the patent is either not infringed or invalid.

5. The grantee shall determine whether any of the circumstances of paragraph 4 above exist. The grantee may also be advised by EPA to make a study of the validity, infringement or other aspects relating to the enforceability of the patent. All costs incurred by the grantee in making the required determinations and studies will be allowable, provided that prior approval of the anticipated costs has been received from the EPA Project Officer, with the advice of the EPA Patent Counsel, Office of General Counsel. Written reports of such determinations and studies shall be submitted to the EPA Project Officer, with copies for the EPA Regional Counsel.

6. If the implementation of the facilities plan would obligate the grantee to the payment of royalties for the use of or rights in patents in excess of $5,000, the grantee's public hearing, held in accordance with 40 CFR 35.917-5, shall include a discussion of the proposed or selected patented product, apparatus or process, and afford concerned commercial interests adequate opportunity to express their views.

7. Special care should be exercised by the grantee in determining reasonableness of the royalties where they may have been arrived at as a result of less than arm's length bargaining; e.g.:

a. Royalties to be paid to persons, including corporations, affiliated with the party requiring payments of such royalty or license fee;

b. Royalties to be paid to unaffiliated parties, including corporations, under an agreement between the person requiring payment and the patent licensor which was entered into in contemplation that the EPA grant or grantee's contract would be awarded; or

c. Royalties to be paid under an agreement between the person requiring payment and the patent licensor which was entered into after the award of the grant by EPA or the contract by the grantee.

8. In any case involving a patent formerly owned by the grantee's contractor, the amount of royalty allowed will not exceed the cost which would have been allowed had the contractor retained title thereto.

9. The royalty shall not exceed the lowest rate at which the licensor has offered or licensed a public or private entity.

10. When negotiating the royalty, the grantee should consider the technical and financial risk that they must assume and the future commercial benefits that may accrue to the licensor as a result of the grantee's utilization of the patent.

11. EPA payment will normally not be made on a royalty until Step 3. Certain exceptions should be allowed when the use of a patented product, apparatus, or process is necessary for the proper performance of the grant agreement, or a subagreement, during Step 1 or 2. The grantee's license or other agreement whereby the grantee was obligated to pay a royalty, must be submitted with the request for EPA payment. If the grantee's payment is made to a licensee, a copy of that licensee's agreement with its licensor must be submitted with the request for EPA payment.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

DEC 28 1978

Construction Grants
Program Requirements Memorandum
PRM No. 79-5

SUBJECT: Construction Incentive Program

FROM: John T. Rhett, Deputy Assistant Administrator
for Water Program Operations (WH-546)

John T. Rhett

TO: Regional Administrator
Regions I-X

Purpose

This memorandum provides guidance and policy pertaining to the application of the construction incentive (CI) clause to the construction phase of a project (Step 3).

Discussion

The construction incentive program provides a mechanism by which contractors on construction grant projects can be motivated to use their construction expertise to improve contract performance and thereby create an overall reduction in the total cost of the contract. This motivation is commonly achieved through monetary incentives and its success has been well demonstrated in direct procurement by other Federal agencies and in private enterprise.

Section 212(2)(c) of the Federal Water Pollution Control Act Amendments of 1972 requires the use of a cost-effective approach to wastewater treatment projects. This requirement is being met primarily by applying a cost-effectiveness analysis in the Step 1 project and value engineering in Step 2. It is now clear that the application of a cost reduction incentive program, which is commonly called value engineering in other Federal agencies, to a project during construction can also be potentially effective in reducing project costs.

Because experience in construction incentive approaches under a grant program is limited, program participation by the grantee and contractors is voluntary. However, technical and cost data for each construction incentive change proposal (CICP) submitted by the contractor must be carefully reviewed. Accordingly, necessary arrangements will be made with the Corps of Engineers (COE) to provide the needed expertise and resources for the CICP review process.

Policy:

By this memorandum, the grantee may include a CI clause, (see attached), as part of the construction bid package using the procedures described in this memorandum.

In order to ensure that each CICP will be properly reviewed and implemented, the number of projects to have the CI clause should be limited by the Region. The actual number of CI clauses authorized will depend on a number of factors determined through experience in implementing the program, including the time needed to review and process each CICP and the nature of the CICP's received. In addition, the use of the CICP clause is limited to projects having a Step 3 eligible cost exceeding $10 million. The Region should report to Headquarters whenever a contract is allowed to include the CI clause. Headquarters concurrence is necessary for approval or rejection of each major CICP received. (See A-3 under Procedure).

The prime contractor and his subcontractors may participate in the construction incentive program when the CI clause is part of the approved bid package. However, participation of subcontractors must be through the prime contractor. In addition, the sharing arrangement must be mutually agreed upon by the prime contractor and the subcontractor prior to the submittal of a construction incentive change proposal (CICP).

To ensure the program's effectiveness and integrity, individuals and firms who have prior involvement in the project design or in other value engineering activity prior to Step 3 grant are not eligible to participate, directly or indirectly, in the development and preparation of a CICP or monetary sharing of any resulting savings.

While the CICP is being processed, the contractor should continue the construction activity as scheduled. The additional engineering fees associated with the evaluation and implementation of the CICP are grant eligible.

Implementation:

Effective immediately, the grantee may include the EPA/CI clause as part of the construction bid package for projects having a Step 3 eligible cost of more than $10 million when approved in accordance with this memorandum.

Procedure:

A. Inclusion of the CI Clause in a Contract

The grantee may submit a written request for inclusion of the CI clause in a contract. Ideally, such requests should be made prior to applying for the Step 3 grant. The Region should respond to such requests in writing and when the request is approved, a copy of the approval correspondence should be forwarded to Headquarters for information.

B. Approval of a CICP

When a CICP is submitted by the contractor in response to the CI clause, the grantee will proceed with the following procedural steps:

1. Expeditiously distribute copies of the CICP to the following offices for review:

    a. 3 copies to the Regional EPA
    b. 1 copy to the State agency
    c. 1 copy to the project designer

2. The Region will forward 1 copy of the CICP to Headquarters and 1 copy to the appropriate office of the COE for technical and cost review.

3. When a CICP having a potential gross cost reduction of more than $500,000 is received, the Region should immediately notify Headquarters. Upon receipt of the notice, a special team of Headquarters staff with the necessary construction experience will be designated to provide assistance to the grantee and Region in the review and approval of the CICP.

4. The grantee will provide follow-up coordination with the project designer, State and EPA.

5. The grantee will review all comments and, when appropriate, call a special meeting with all concerned parties to resolve any outstanding comments.

6. Subject to State and EPA concurrence, the grantee will notify the contractor in writing of the conclusion of the meeting and the decision made on the CICP.

Construction Incentive Clause
The EPA Construction Grants Program

I. Purpose

This clause defines a "construction incentive change proposal" (CICP) and establishes the policy and procedures for the application of CICP's in the Step 3 grant process of the EPA Construction Grants Program.

II. CICP

A. Definition: A CICP is a formally written proposal for a change order during the construction of a wastewater treatment project funded under the EPA Construction Grants Program. A CICP must be initiated, developed and identified as such by the contractor or his subcontractor. A CICP must result in a gross capital saving of $50,000 or more.

A CICP must result in a net capital cost reduction while causing no increase in the total life cycle cost of the project and meeting the following conditions.

1. The required function, reliability and safety of the project will be maintained.

2. The proposed change will not result in any contract rebidding.

3. The proposed change must be in compliance with Section 204(a)(6) of the Federal Water Pollution Control Act Amendments of 1972 which prohibits proprietary and restrictive specifications for bids in connection with construction grant projects.

4. The proposed change will not cause undue interruption of the contract work.

5. The proposed change must be in compliance with local permits and regulations.

B. Applicability: Subject to the EPA's approval this clause applies to all contracts for the construction of wastewater treatment projects funded under the EPA Construction Grants Program (Step 3 grants).

C. Content: A CICP must contain pertinent information and supporting documents for evaluation by the involved contracting authority. As a minimum, the following information should be included.

1. Name of individuals associated with the development and preparation of the CICP.

2. A detailed description and duly signed plans and specifications as presently designed and the proposed changes. Clear identification of any advantages and disadvantages for each change.

3. A detailed procedure and schedule for implementing the proposed change. This should include all necessary contract amendments. Also indicated must be the latest date the CICP must be approved for implementation.

4. A summary of estimated costs to include the following:

    a. project construction costs before and after the CICP. This should be a detailed estimate identifying the following items for each trade involved in the CICP:

        1. quantities of materials and equipment
        2. unit prices of materials and equipment
        3. labor hours and rates for installation
        4. subcontractor and prime contractor mark-ups

    b. operation and maintenance costs before and after the CICP;

    c. costs for implementing the CICP not included in item 4a above;

    d. contractor's share of the savings based on paragraph III below;

    e. other data as required in section 35.938-5(b)(c) and (d) of the construction grants regulations;

    f. time required for executing the proposed change;

To the extent indicated below, contractors may restrict the Environmental Protection Agency's and the project owner's use of any construction incentive change proposal or the supporting data submitted pursuant to this program. Suggested wording for inclusion in CICP's is provided below:

> "This data furnished pursuant to the construction incentive clause of contract ________ shall not be disclosed beyond that which is necessary to accomplish the review, or duplicated, used, or disclosed, in whole or in part, for any purpose other than to evaluate a value engineering proposal submitted under said clause. This restriction does not limit the Government's right to use information contained in this data if it is or has been obtained, or is otherwise available, from the contractor, or from

> another source, without limitations. If such a proposal is accepted by the owner under said contract after the use of this data in such an evaluation, the United States Environmental Protection Agency and the project owner shall have the right to duplicate, use, and disclose any data reasonably necessary to the full utilization of such proposal as accepted, in any manner and for any purpose whatsoever, and have others so do."

The grantee may, subject to approval by the State and EPA, modify, accept or reject the CICP. However, if a CICP were modified or were not acted upon within the time frame specified in the CICP, the contractor may withdraw, in part or in whole, the CICP. In any event, the grantee will not be liable for the cost of developing the CICP withdrawn or rejected.

When a CICP is accepted by the grantee, the processing procedure specified under Section 35.938-5 for change orders should be used and approval of the CICP by the State and EPA is required. When a CICP is rejected, the contractor may not appeal to EPA.

III. Sharing Provisions

Construction Cost Sharing

Upon acceptance of a CICP, the contractor will share the net capital savings pursuant to this contract based on the formula below. Computation for the net savings is to be based on the following formula:

Net Savings = Initial contract cost - (revised contract cost + CICP development cost + CICP implementation cost)

The CICP implementation cost should include, when appropriate, consultant's fee for reviewing and redesigning the changes. However, costs for processing the CICP incurred by the grantee, State and EPA are excluded.

The contractor's cost for developing the CICP is limited to that directly associated with the preparation of the CICP package. When approved, such costs will be reimbursed to the contractor. However, any costs which cannot be satisfactorily substantiated will be rejected and will not be subject to reimbursement.

Sharing Formula

a. when the total net savings based on the computation above is $1 million or less, the contractor will receive 50% of the saving

b. when the total cumulative net savings exceed \$1 million, the contractor's share will be computed based on the following formula:

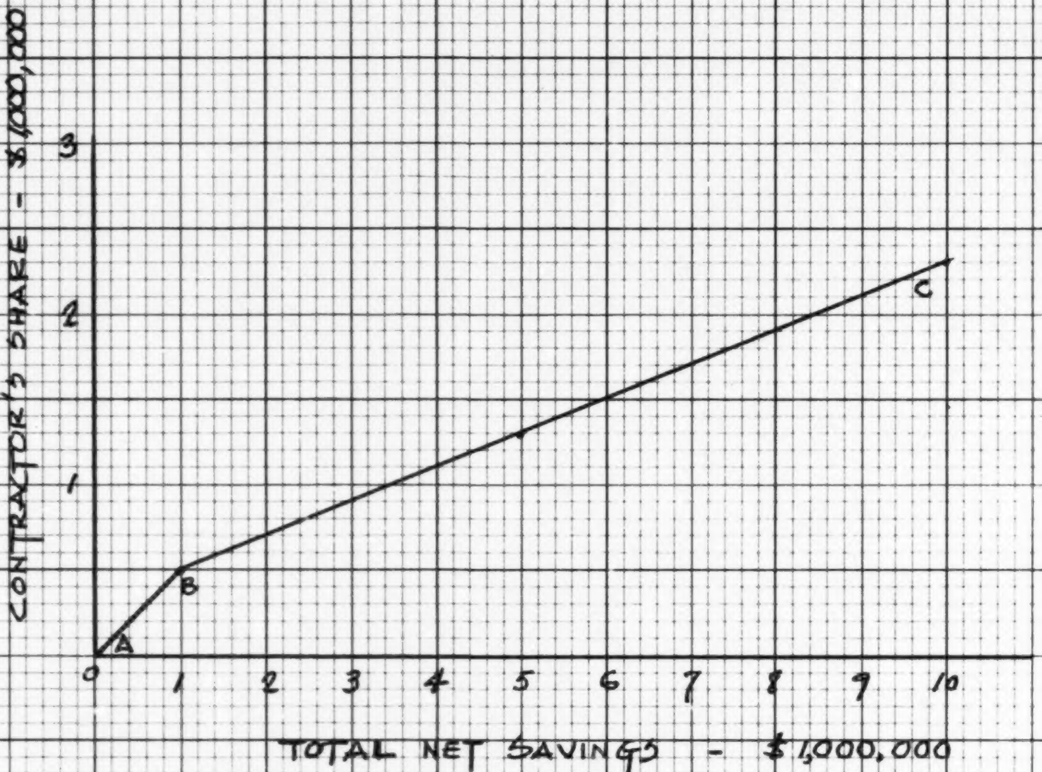
$$y = .2x + 300{,}000$$

where:

y = contractor's share in dollars
x = total net saving in dollars

For example, if the total net saving is \$3.572 million --

$$\begin{aligned} y &= .2(\$3{,}572{,}000) + 300{,}000 \\ &= \$1{,}014{,}400 \end{aligned}$$



COST SHARING CURVE

CONTRACTOR'S SHARE VS NET SAVINGS

FORMULA: A–B $Y = .5X$

B–C $Y = .2X + 300,000$

WHERE: X AND Y IN DOLLARS

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SUBJECT: Grant Funding of Projects Requiring Treatment More Stringent than Secondary

Construction Grants
Program Requirements Memorandum
PRM #79-7

FROM: Thomas C. Jorling
Assistant Administrator for Water and Waste Management (WH-556)

TO: Water Division Directors,
Regions I-X

MAR 9 1979

Purpose

This memorandum sets forth Agency policy and procedures for Headquarters and regional review of wastewater treatment projects designed to meet effluent requirements more stringent than secondary treatment. It also groups such projects into two categories--advanced secondary treatment (AST) and advanced waste treatment (AWT) and defines these terms. In addition, this memorandum provides a standard for reviewing the financial impact of advanced projects upon small communities.

We anticipate that the review process will result in the development of improved national guidance on wasteload allocations and the water quality standards-setting process. Thus, these review requirements will be supplemented in the future by such guidance.

Discussion

The Agency has in the past expressed growing concern with the high cost and energy consumption of publicly-owned treatment works in many communities. These high costs and energy demands are frequently attributable to optimistic projections of anticipated growth or sophisticated extra unit processes. Funding facilities with these conditions with limited grant funds results in fewer projects being funded overall, delay in accomplishing basic secondary treatment goals, and, particularly in smaller communities, the financial burden of high operation and maintenance as well as construction costs.

Consequently, the Agency has to take a hard look at the number and types of projects that are planned for treatment more stringent than secondary to achieve the Clean Water Act goals. Regions and States are reminded in this connection of the checklist procedure for all Step 2 and Step 3 projects that was instituted in the June 8, 1978, joint memo from Rhett/Davis. The checklist procedure and the independent justification described in the following sections are meant to supplement, not replace, the review of cost-effectiveness and appropriateness of facility design normally given to projects.

In action approving the FY 79 appropriation for the Construction Grants Program, the Appropriations Conference Committee agreed "that grant funds may be used for construction of new facilities providing treatment greater than secondary...only if the incremental cost of the advanced treatment is $1 million or less, or if the Administrator personally determines that advanced treatment is required and will definitely result in significant water quality and public health improvements."

All advanced projects with an incremental capital cost over $1 million that are recommended for funding by the regions or States must be reviewed at EPA Headquarters after completion of basic facility plan review and collection of supplementary materials by the regions or States. All other projects more stringent than secondary but with an incremental capital cost of $1 million or less shall receive a comparably intensive review at the regional/State level.

Clarification is needed for terminology used in review of projects. The Agency has defined secondary treatment as a treatment level meeting effluent limitations for Biochemical Oxygen Demand (BOD) and Suspended Solids (SS) of 30/30 mg/l on a maximum monthly average basis or 85 percent removal of these parameters, whichever is more stringent. The group of projects requiring treatment more stringent than secondary can be divided into two groups: advanced secondary treatment (AST) and AWT.

To arrive at the above distinctions the Agency reviewed about 6,300 projects shown in the 1976 Needs Survey as requiring treatment more stringent than secondary. Of the 6,300, 1,200 projects as yet unbuilt will be required to meet very stringent levels of treatment of BOD less than 10 mg/l and/or nitrogen removal. Additional analysis by the Agency showed distinct cost increases and shifts to more sophisticated technology to achieve these levels. Therefore, the popularized term "AWT" should only be used to refer to treatment levels providing for maximum monthly average BOD/SS less than 10 mg/l and/or total nitrogen removal of greater than 50 percent. ("Total Nitrogen removal" = TKN plus nitrite+nitrate). These projects are subject to especially intensive review and require independent justification. Other projects requiring treatment more stringent than secondary but not to AWT levels can be referred to as "advanced secondary treatment." Review procedures for these projects are somewhat less rigorous.

A treatment facility designed to meet effluent limitations of BOD/SS 30/30 mg/l or 85 percent removal with just disinfection processes shall be considered as a secondary rather than advanced secondary treatment facility for purposes of this PRM. Other definitions of secondary treatment (e.g., 25/30 or 20/20) may be used if included in approved State criteria, if secondary treatment technologies would be used to achieve these levels, and if any extra costs (present worth) beyond those for meeting 30/30 limits would be a very small percentage of the present worth costs of the entire treatment facility. Secondary treatment facilities with just phosphorus removal add-ons with a capital cost more than $1 million and derived from the international agreement for the Great Lakes basin shall be considered advanced secondary, but not subject to Headquarters review.

The policy of the Agency is to encourage land treatment facilities and other alternative technologies which provide for reuse of wastewater or recycling of nutrients and other pollutants. Such projects usually afford water quality enhancement beyond the minimum established in permits, and water management benefits as well. Accordingly, where land treatment or other reuse/recycling technologies are designed to meet effluent limitations more stringent than secondary, the procedures herein would allow such projects to proceed without special review unless their costs were found to be excessive. Excessive costs are defined as those which would exceed the high cost criterion presented in section 3 of this memorandum or the average present worth costs of AST and AWT projects (roughly estimated at 25 percent above secondary for the former category and 50 percent for the latter).

Some AWT projects, particularly those featuring waste stabilization ponds plus filtration, may not cost more than AST projects. Thus, AWT projects with a present worth cost not exceeding that for secondary treatment by more than 25 percent may be reviewed under procedures established herein for AST projects.

The cost of treatment - secondary as well as more stringent than secondary - can have severe local fiscal impacts. The latest Title II regulations give more emphasis to alternative or individual systems and require a cost-effectiveness analysis that could result in lower project costs, especially to small communities. This emphasis, along with increased review, should help ensure that projects with excessive capacity for growth or unnecessarily designed to meet effluent requirements more stringent than secondary, with capital or operations and maintenance costs that may place an intolerable financial burden upon the community, do not receive grant funds.

Additional guidance on coordination of reviews of advanced treatment projects with the interim municipal enforcement policy will be developed in conjunction with the EPA Office of Water Enforcement.

Policy

The Agency will conduct a rigorous review of projects designed for treatment more stringent than secondary. The incremental additional capital costs of a project that are attributable to effluent limitations or water quality requirements more stringent than secondary must be based on a justification showing significant receiving water quality improvement and mitigation of public health problems where they exist. In addition, projects requiring treatment more stringent than secondary should be evaluated for their financial impact upon the community. Also, the inflationary costs for delay should be considered in project reviews. The regions will review all such projects. They will decide how to proceed in accordance with this PRM for projects having incremental costs beyond secondary of $1 million or less, and for other projects explicitly designated in this PRM for final regional decision. Headquarters review and decision on how to proceed will follow preliminary regional review for the remaining projects with incremental capital costs beyond secondary greater than $1 million.

For projects with an incremental cost of $1 million or less, the review is a delegable function under the 205(g) delegation agreements. For projects with an incremental cost of greater than $1 million, States may do the initial review but regions must concur with the State's conclusions before transmitting the project to Headquarters.

Beginning in FY 1980, the delegation of that group of project reviews now conducted by Headquarters to those regional offices demonstrating capability to perform such reviews well will be considered.

Review of the projects should proceed as outlined below:

Procedure

Preliminary steps in the review should be 1) determination of the explicit effluent requirements for the project and identification as secondary, advanced secondary or AWT, and 2) determination of incremental capital cost of advanced treatment as more or less than $1 million.

1. Review of Projects Identified as AST

If a project is identified as having to meet advanced secondary treatment standards (more stringent than secondary but not AWT), the checklist should be used to review the project.

For project approval, the review must determine that:

1. seasonal operation has been evaluated;
2. the land treatment alternative has been considered; and
3. the advanced secondary portions of the project will definitely result in significant water quality improvements and mitigation of public health problems where they exist.

Reviews of project costs and local financial impacts must comply with section 3. If the checklist review demonstrates that the required level of treatment is not well justified, Federal funding of all or part of the project should be postponed until the project is redesigned (if necessary) or the level of treatment is fully justified.

If the project involves land treatment or other innovative/alternative technologies featuring wastewater reuse or recycling of pollutants, does not exceed the high cost criterion given in section 3 below and its incremental present worth cost does not exceed 25 percent of the cost of a new secondary treatment plant, then the project should proceed without further review. If the project does exceed the high cost or present worth criteria, the procedures prescribed herein for AST projects shall apply.

a. Incremental cost of AST is $1 million or less.

Regions should follow the criteria and procedures given above. The decision will be made at the regional level.

b. Incremental cost of AST is greater than $1 million.

If, after the above review, the Regional Administrator wants to proceed with funding, the project must receive approval from the Administrator in EPA Headquarters. The following material should be sent to the Office of Water Program Operations: attention Michael B. Cook, USEPA, Facility Requirements Division (WH 595), 401 M Street, S.W., Washington, D.C. 20460, telephone (202) 426-9404, for final review and approval:

(1) facility plan (draft or final) including supporting documentation on alternatives considered with region's review and comments;
(2) completed checklist with detailed answers to supplement checked responses;
(3) region's evaluation of water quality and public health benefits that will result from advanced secondary treatment based upon data submitted concerning the project;
(4) region's evaluation of seasonal operation of AST portion of project; and
(5) the major documents summarizing the establishment of water quality standards and effluent limitations for the project.

Headquarters has developed procedures for the internal review of advanced secondary projects which rely heavily upon regional/State evaluations. Advanced secondary projects without complex issues are expected to be reviewed within 25 working days of receipt of the project at Headquarters.

2. Review of Projects Identified as AWT

Regions should assist grantees and the State in developing the data needed for an independent justification of AWT. This should include at a minimum:

(1) facility plan (draft or final) and supporting documents, particularly on alternatives considered with region's review and comments.

(2) completed checklist with detailed answers to supplement checked responses;
(3) region's evaluation of water quality and public health benefits that will result from both secondary treatment and the additional treatment beyond secondary based upon data submitted for the project;
(4) the major documents summarizing the establishment of water quality standards and effluent limitations for the project;
(5) an identification and review of the need for each proposed unit process included in the proposed treatment facility for meeting the effluent limitation identified in item (4). Particular attention should be given to an assessment of the impact on beneficial uses of dropping one or a few treatment processes (or redesigning one or more treatment processes to provide a lesser degree of treatment) and the cost savings associated with these options:
(6) a detailed review of land treatment and seasonal operation alternatives; and
(7) if the item 5 and 6 review indicates a more cost-effective option, an estimate for the 20-year planning period of the capital, operation and maintenance, and total present worth costs of that option.

The review of an AWT project must determine whether the project meets all of the following criteria:

(1) The beneficial uses established for the receiving water can be attained or, if not, lesser uses can be achieved when the effluent limits are met, and industrial sources meet their pretreatment and permit conditions. Where Best Management Practices for nonpoint source control are required to achieve standards not now being attained, these controls must be in place or part of a draft or an EPA approved water quality management plan. The differences must be significant between water quality and beneficial uses attained or enhanced by the proposed project compared with water quality and uses attainable from the project with one or a few treatment processes beyond secondary dropped or modified and with less stringent effluent limitations reflecting their omission or modification.

(2) State laws or requirements or criteria within State water quality standards are not more stringent than the Red Book criteria unless fully justified as essential to achieve and sustain the beneficial uses.

An exception to this criterion may be allowed if a project is necessary to prevent degradation of the following types of "national resources waters":

a. National Parks

b. National Wildlife Refuges

c. National Seashores

d. National Monuments

e. National Marine Sanctuaries

f. National Estuarine Sanctuaries

Funding necessary to prevent degradation of other waters of national, rather than regional or State, importance may be allowed on a case-by-case basis if both the following conditions are met:

a. The water is of truly national, rather than regional or State importance.

b. Federal legislation or regulations are directed toward protecting the specific body of water from degradation.

(3) The wasteload allocations or other analysis resulting in the effluent limitations, along with the assumptions on which the analysis is based, are scientifically supported by intensive water quality surveys or appropriate field investigations conducted on the water bodies in question, and calibrated and verified models or other technically sound analyses.

(4) The treatment processes are the most cost-effective means of meeting the prescribed effluent limitations.

(5) The community is aware of the project's costs for treatment and reserve capacity. Cost information on total capital costs, local financing, and annual or monthly operating and debt service costs should be presented at a public hearing as required in PRM 76-3. Review of project costs and local financial impacts must comply with section 3.

(6) Land treatment has been fully evaluated.

If the above conditions are not met, either the entire project or its AWT elements (if they can be separated out) should not be funded pending further action.

Federal funding of all or the unjustified part of the project should be postponed until the project (if necessary) is redesigned or the level of treatment is fully justified. The advanced wastewater treatment increment of the project that is not justified should not be funded unless and until the project will result in significant water quality and public health improvements.

Should the review show that AWT cannot be justified, but that some treatment greater than secondary can be justified under the rules for review of AST projects, then the justified portion should be funded. The project should be segmented to permit funding of the justified portion and that section should be designed, if practicable, to allow addition of the other segment at a later date after further analyses.

Projects may be excepted from the AWT review procedures under the following circumstances:

(1) Project features land treatment or other innovative/alternative technologies affording wastewater reuse or recycling of pollutants where the project's cost would not exceed the high cost criterion described in section 3. Also, the incremental present worth cost of such a project must not exceed 50 percent of the present worth cost of a new secondary treatment project. If these criteria are met, the project may proceed without further review.

(2) The AWT project's incremental present worth cost does not exceed 25 percent of the present worth cost of a new secondary treatment facility. Project review must, nevertheless, conform with AST review procedures.

a. Incremental cost of AWT is $1 million or less.

Regions should follow the criteria and procedures given above. The decision will be made at the regional level.

b. Incremental capital cost of AWT is greater than $1 million.

If the Regional Administrator is satisfied that the project meets all of the required criteria and wants to proceed with funding, the project must receive approval from the Administrator in EPA Headquaters. The region shall furnish a report covering all of the criteria listed in section 2 and forward each of the documents listed in section 2 to the Office of Water Program Operations: attention Michael B. Cook, Director, Facility Requirements Division (WH 595), United States Environmental Protection Agency, 401 M Street, S.W., Washington, D.C. 20460, telephone (202)426-9404, as soon as possible after the need for Headquarters review is identified.

Headquarters has developed internal procedures for a task force review of complex AST and AWT projects that will review the major issues and questions intensively based upon the material sent in by regions and States. Decisions will be made on the basis of the criteria outlined above. It is planned for the Administrator's decision on the project to be made within 45 to 60 working days of receipt of the project at Headquarters. This decision will be communicated to the regions.

3. Local Financial Impacts

All projects designed to achieve treatment more stringent than secondary must be evaluated in terms of financial impact upon the community. This evaluation should supplement the display and disclosure of financial information and local costs required of all facility plans and described in PRM 76-3. Total annual costs to a typical domestic user comprise both the existing preproject costs and the increase attributable to the proposed new facilities. A project shall be considered high-cost when the total average annual cost (debt service, operation and maintenance, connection costs) to a domestic user exceeds the following percentage of median household incomes:

1.50 percent when the median income is under $6,000

2.00 percent when the median income is $6,000 - $10,000

2.50 percent when the median income is over $10,000

If review shows that a project is high cost, try to determine which elements of the project are responsible. Determine whether it is the treatment processes selected, excessive reserve capacity, new sewer construction, or other factors in the physical setting that may cause excessive costs in either construction or operation of the facility. Work with the grantee and the State to revise the facility plan or redesign the project to reduce the costs, or obtain assistance from the Farmer's Home Administration (FmHA) or another source with the local share. There is agreement between FmHA, EPA and Economic Development Administration for all to use the above rule-of-thumb in review of projects. Regions should proceed with a project determined to be high cost under this criterion only after consulting with the Facility Requirements Division in Headquarters.

Implementation

This policy shall be implemented immediately as follows. Regions shall advise States of the policy of strict review in the regions and Headquarters of treatment more stringent than secondary (advanced secondary and AWT). They should also be advised of the Agency's policy not to fund such projects if not justified. The policy should be applied to all projects prepared for Step 2 or 3 funding.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAY 11 1979

Program Requirements Memorandum
PRM # 79-9

SUBJECT: Outlay Management in the Construction Grants Program

FROM: Thomas C. Jorling, Assistant Administrator
for Water and Waste Management (WH-556)

TO: Regional Administrators

PURPOSE

This memorandum sets forth policy on outlay management in the Environmental Protection Agency's construction grants program.

POLICY

It is the policy of the Environmental Protection Agency to establish and maintain a comprehensive system of outlay planning and management in the construction grants program. Regional Offices will be responsible for developing realistic outlay estimates, and for meeting approved outlay plans on a monthly basis.

In furtherance of this policy, Regional Offices are to pursue a program of active outlay management, at both the project and the contract levels, for all large construction grants projects designated by the Regional Administrator. For all such projects outlay schedules are to be developed for all major construction and A/E contracts at the time of contract award. This requirement replaces the need for the grantee to submit the proposed payment schedule prior to grant award that is normally made part of the grant agreement. For any contracts not awarded within six months of grant award, the grantee must furnish a schedule of projected start and completion dates for each contract. The method for submitting this information to the Region will be determined by the Regional Administrator.

The outlay schedules are to be revised annually by July 1st, for input into the federal budget process, and whenever actual project performance strays significantly (-5% or +10%) from the schedule. Each project is to be inspected at least quarterly (on a continuing resident or monthly basis for large or complex projects) to monitor performance against these schedules, and to resolve problems before they lead to project delays.

To provide the Region with the necessary information for developing outlay estimates, and to provide a basis for subsequent project/contract management, the grantee must submit the following information for each major construction or A/E contract by July 1st of each year:

- EPA project identification (grant) number.
- Grantee name.
- Contract identification (name or number).
- Contract award date.
- Projected contract completion date.
- Total eligible contract amount.
- Quarterly payment schedule (75% EPA share) for last quarter of current fiscal year and all of the following fiscal year, and an annual estimate for the succeeding fiscal year. (The Regional Administrator may request a monthly payment schedule for contracts that may have a significant impact on Regional outlay projections.)
- Other information required by the Regional Administrator for effective contract management.

For new contracts awarded after July 1st, or for contract schedules that must be revised during the year because actual performance differs from the projection, the grantee should submit, along with the other administrative information, projections only for the quarters that remain in the year, plus the annual projection for the succeeding year.

On an annual basis these contract level outlay schedules are to be aggregated, modified as appropriate, and combined with outlay projections for Step 1, Step 2, small Step 3 and 4, Section 206(a), and P.L. 84-660 projects, as well as expected outlays for future obligations and drawdowns of Section 205(g) State delegation agreements, to become the Region's annual outlay commitment. This commitment will be in the form of a monthly projection, by State and Regional total, of the outlay demand for the upcoming fiscal year; and a annual projection, by State and Regional total, for the following (budget) year. The commitment is due to Headquarters by August 10th of each year. Upon approval by Headquarters, the Regions will be required to meet their commitment to within ±5% of the cumulative projection on a monthly basis. Regional performance will be tracked only against the total Regional monthly commitment. The State breakdown and the annual budget year projection will only be considered activity indicators.

DISCUSSION

This policy is being implemented by EPA for two purposes: to develop more accurate fiscal estimates for the President's budget, and to initiate a comprehensive program of project management in the post-Step 3 phase of the construction grants process. Accurate budget estimates are required for this program because of its size and impact on federal budget decisions. Effective project management is essential to assure that fiscal estimates are achieved, and that construction grants projects proceed on schedule to achieve the primary goal of clean water at the earliest possible date and at minimum cost. The program being adopted by EPA is designed to attain these objectives.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

12 JUL 1979

OFFICE OF WATER AND
HAZARDOUS MATERIALS

Construction Grants
Program Requirements Memorandum
PRM No. 79-10

SUBJECT: Qualification of Major Items of Equipment

FROM: John T. Rhett, Deputy Assistant Administrator
for Water Program Operations (WH-546)

John T. Rhett

TO: Regional Administrator
Regions I-X

Purpose

This memorandum sets forth guidance for the qualification of major items of equipment for construction grant projects. This guidance is appropriate for use during either Step 2 or Step 3 phases of construction.

Discussion

The following qualification procedures are for optional use by Environmental Protection Agency (EPA) grantees who desire to qualify major items of equipment for construction grant projects with the approval of the EPA regional offices. Under 40 CFR 35.935-2,(43 FR 44071, September 27, 1978) the Regional Administrator may review grantee procurements including equipment qualification and may request additional grantee actions consistent with applicable statutes and regulations.

Qualification is a system that may be used to ease the administrative burden of determining responsive, responsible bidders on equipment. However, qualification is not a conclusive determination of responsibility and a qualified equipment bidder or offeror may be rejected as nonresponsive on the basis of subsequently introduced information e.g., shop drawings. In all cases the equipment furnished must comply with the specifications.

There are a number of necessary minimum requirements for any qualification system. Whether the qualification procedure is to take place in Step 2 or Step 3, all of these requirements must be met. If the qualification is to occur during Step 2 the qualification information package will not contain plans and specifications. Therefore a qualification information package containing the relevant information must be prepared. This package must contain enough specific detail regarding performance and quality to assure that equipment sources will thoroughly understand what is required of the specified equipment.

Adequate advertisement is critically important to assure that knowledge of the project is widespread and so that new manufacturers, small firms and minority businesses are provided an opportunity to compete. Adequate time must be allowed for submission of the necessary information for qualification review since an overly strict time frame would limit competition. This should conform to 40 CFR 35.938-4(b),(43 FR 44080, September 27, 1978), generally 30 days. Adequate time must also be provided for the engineering evaluation of the qualification packages submitted.

Policy

A. Advertisement

The grantee is responsible for accomplishing adequate advertisement for qualification. Whether qualification occurs during Step 2, or during Step 3, the advertisement procedure shall conform to Section 35.938-4(a) of the EPA regulations. The advertisement procedure for qualification shall also conform to the local regulations regarding advertisements for construction bids. In addition to advertisements, private mailings to known equipment sources may be made. Mailing lists of equipment sources are available from trade journals and technical associations. The advertisement shall contain all information needed by the sources to properly submit information regarding their equipment for consideration. The advertisement shall include the following as a minimum:

1. Address and telephone number of grantee.

2. Name, size and type of plant.

3. Name, address, and telephone number of the designer and name of contact for inquiries.

4. Location where qualification information package can be obtained.

5. Cost of qualification information package -- (this should not exceed the price that bidders must pay to obtain bidding documents).

6. Brief schedule of equipment needed in the construction project that is to be qualified (e.g., filter press).

7. Locations of qualification information for review by interested individuals. These locations should be the same as those used for additional information for contractors interested in bidding.

8. Deadline for submittal of qualification packages by equipment sources. This should be a minimum of 30 days from date of advertisement to allow adequate time for equipment sources to prepare their qualification package. Longer time periods should be provided for qualification submission for complex systems.

B. Qualification Information Package

The qualification information package, prepared by the design engineer, shall include the construction bid package plans and specifications or suitable extracts of this information if qualification occurs during Step 2. These specifications shall be performance specifications where possible and in all other cases conform to the two brand names or equal requirement. In addition to the plans and specifications, a description of the package the equipment sources submit for qualification consideration should be included.

The equipment sources should submit catalog cuts or readily available specifications and drawings of their equipment and any supplementary information that would be helpful in the evaluation. It should be stressed that shop drawing quality submittals are not required or wanted in this phase of the project.

All equipment manufacturers or distributors interested in supplying their equipment for the project must submit a qualification package for approval, including the suppliers who propose to furnish the equipment which may have been preliminarily named to indicate the salient requirements of the equipment desired. This is required so that all equipment offerors have the same opportunity to submit information for consideration, and to assure that the equipment offered fully meets all requirements of the specifications.

A time schedule of the qualification and bidding process must be included in the qualification information package.

C. Evaluation

Evaluation of the qualification submission shall be completed by the design engineer within 30 days from date of closing of submittals of qualification packages. At the end of the review period, the grantee will notify all proposers of their status (by registered mail return receipt requested). Such correspondence should contain notice consistent with EPA protest regulations described below that any protest actions must take place within the time limitations described in 40 CFR 35.939(b), (43 FR 44083, September 27, 1978). By addendum to the specifications, the grantee will notify the holders of the bid package of the equipment that has been qualified for the specific project.

D. Protest Procedures

Protest procedures regarding qualification must conform to EPA regulations 40 CFR Section 35.939, (43 FR 44083, September 27, 1978).

The proposer of any equipment qualified as a result of a protest will be notified by the grantee and a further addendum to the specifications will be sent to the bid package holders.

In those cases when qualification takes place during Step 3 the entire process (including protests to the grantee, if any) should take place within the time frame of the advertisement for construction bids and the bid opening. When qualification takes place during the Step 2 adequate time must be allowed for submittals and prompt determination of qualified equipment must be made. All protests should be resolved before the bidding process. In order to satisfy this requirement, grantees must state in the qualification information package and notification to proposers of their status that any decision on qualification is final grantee action and the time for protests under 40 CFR 35.939(b), (43 FR 44083, September 27, 1978), begins to run from the date the proposers receive notification of their status from the grantee. Failure to protest within one week of this time period will result in finding the protest untimely. Consistent with the procedures of this memorandum, after determination of the qualified equipment no other equipment can be considered.

Qualification does not exempt the supplier from meeting the specifications. The specifications are the final authority for acceptance of equipment. Approval of a qualification package does not eliminate the need for shop drawing submittals and approvals during construction.

E. Construction Delays

If bidding is significantly delayed, then the qualification process may be reopened by the grantee with the EPA regional office approval in order to allow consideration of equipment sources that may then be interested in supplying equipment. In such cases the previously qualified equipment need not be reconsidered.

F. Other Qualification Procedures

Qualification procedures consistent with state or local law which provide the same considerations in terms of competition may be used in lieu of these procedures.

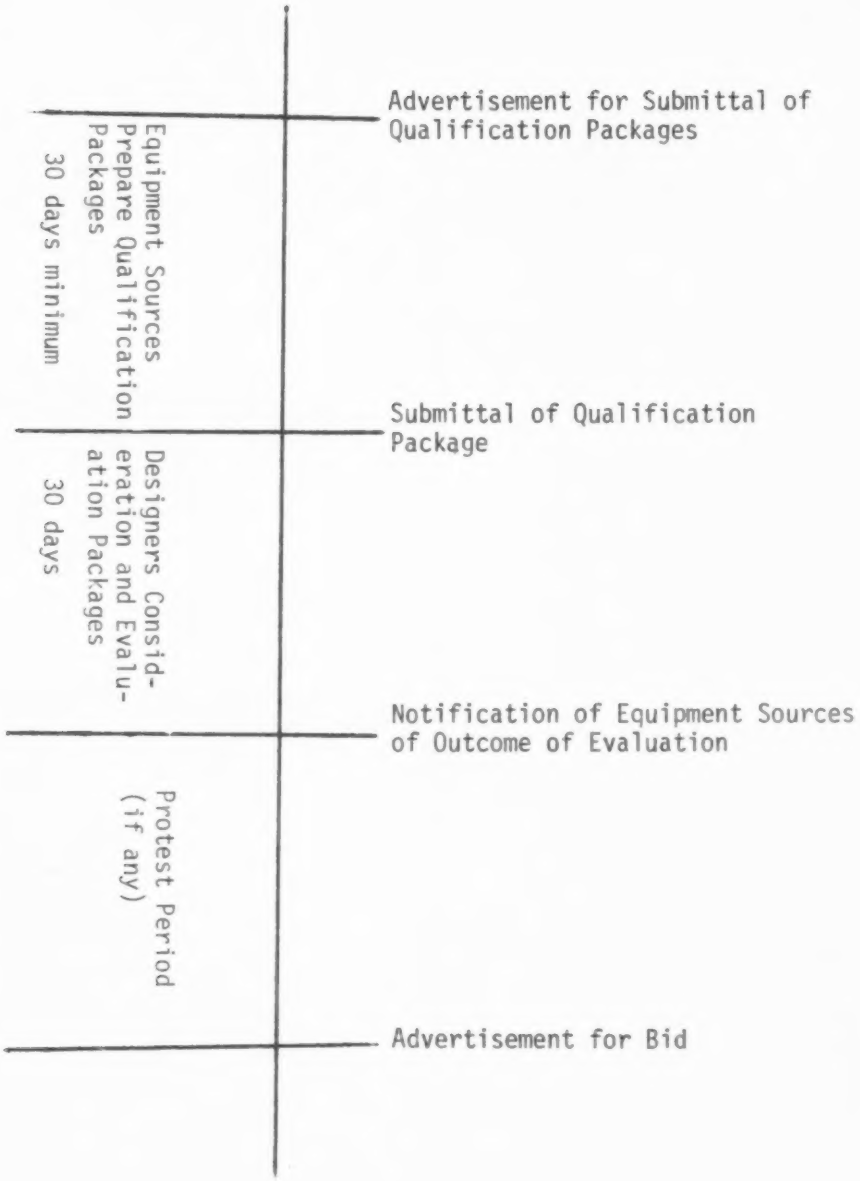
G. Public Inspection

On the cut off date for submittal of qualification packages for evaluation a list of all equipment sources that have submitted qualification packages shall be published. Whether the packages themselves become available for public inspection will be decided by local ordinances on the subject of public disclosure.

H. Costs

The cost incurred by the grantee incidental to qualification of major items of equipment for inclusion in a construction grant project are eligible for construction grant funding during the step in which they are undertaken.

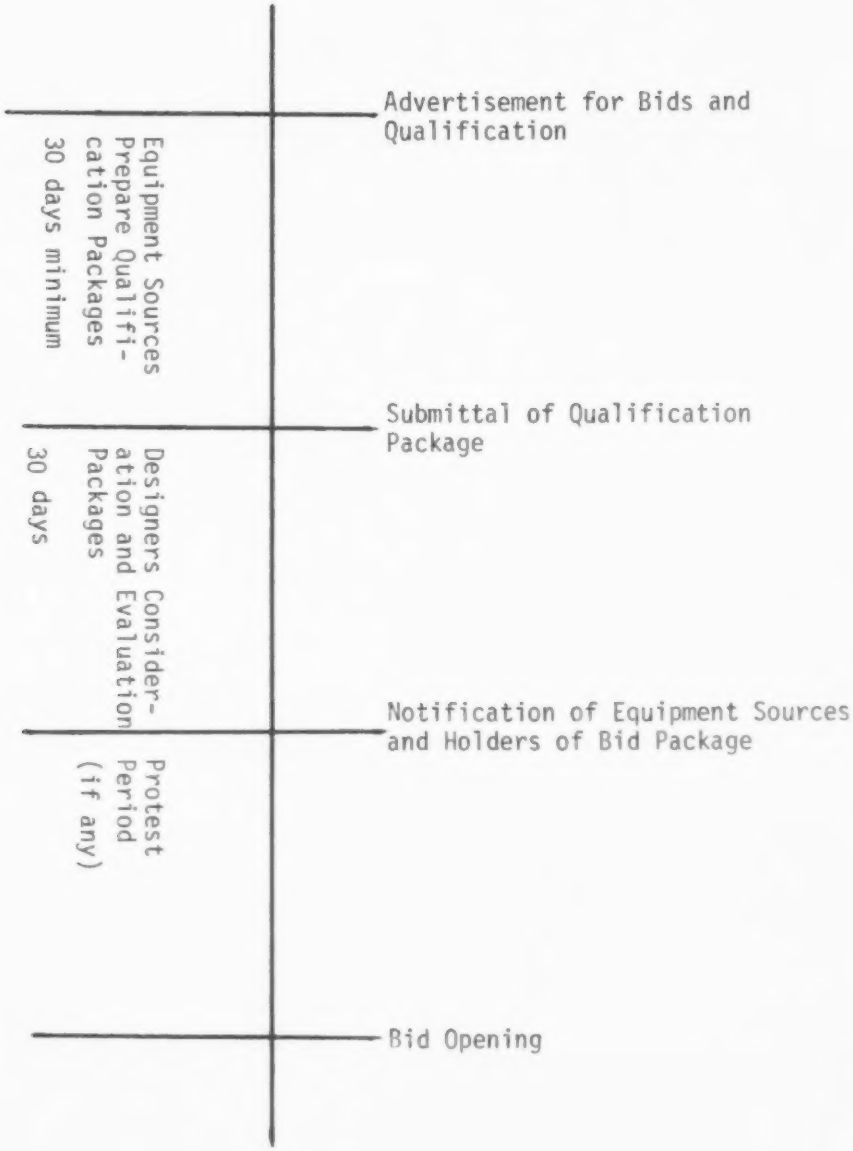
Attachments


Advertisement for Submittal of Qualification Packages
Equipment Sources Prepare Qualification Packages
30 days minimum
Submittal of Qualification Package
Designers Consideration and Evaluation Packages
30 days
Notification of Equipment Sources of Outcome of Evaluation
Protest Period (if any)
Advertisement for Bid

STEP 2

Attachment 1

STEP 3


Advertisement for Bids and Qualification
Equipment Sources Prepare Qualification Packages
30 days minimum
Submittal of Qualification Package
Designers Consideration and Evaluation Packages
30 days
Notification of Equipment Sources and Holders of Bid Package
Protest Period (if any)
Bid Opening

Attachment 2

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

SEP 5 1979

Construction Grants
Program Requirements Memorandum
PRM No. 79-11
SAM 38

OFFICE OF WATER AND
HAZARDOUS MATERIALS

Subject: Funding of Waste Load Allocations and Water Quality Analyses for POTW Decisions

From: Swep T. Davis, Deputy Assistant Administrator for Water Planning & Standards

Henry L. Longest II, Acting Deputy Assistant Administrator for Water Program Operations

TO: Regional Administrators
ATTN: Regional Water Division Directors

Purpose

This memorandum establishes policy and procedures for the funding of waste load allocations and water quality analyses required for publicly-owned treatment works (POTWs) decisions.

Background

EPA, recognizing the costs and energy requirements of publicly-owned treatment works (POTWs) providing treatment greater than secondary (AST/AWT), has taken several steps to insure that such facilities are only Federally funded when based upon technically adequate effluent limitations. In June 1978 a joint OWPS/OWPO guidance memorandum was issued which contained a checklist to be completed before a project providing AST/AWT could receive construction grant funding. On November 2, 1978, SAM 37 was issued by OWPS which established policy and procedures for the use of Section 208 funds to review and revise waste load allocations for POTWs subject to permit limitations requiring AST/AWT. On March 9, 1979, PRM 79-7 was issued by OWPO which established policy and procedures for the review and funding of proposed AST/AWT projects. Reduced Section 106 and 208 FY 80 appropriations coupled with increasing demands on Section 106 funds to support the issuance of second round NPDES permits and expanded monitoring programs may result in some states being unable to provide adequate funding for the timely review and revision of waste load allocations. It is therefore necessary to provide additional policy and procedures for FY'80 on the use of Section 201 and 205(g) funding to augment Section 106 funds to support these tasks.

Policy

Nothing in this memorandum is to affect the responsibility and right established by Sections 303 and 510 of the Clean Water Act for each State to develop water quality standards and waste load allocations. The State water quality management program will continue to exercise overall management responsibility for assuring that water quality analyses and waste load allocations are conducted in a satisfactory manner. The primary sources of funding for these activities are program grants and State funds. The amount of Section 106 and State funds currently expended for POTW-related waste load allocations should not be reduced because Section 201 and 205(g) funds may be used, on a case-by-case basis and subject to requirements in this memorandum, to augment State and Section 106 funds to provide for the development of POTW-related waste load allocations and supporting water quality analyses. Except where EPA and the State have determined that existing limitations should be revised, Section 201 and 205(g) funds may not be used to review effluent limitations or to develop alternative effluent limitations; e.g., costs associated with the development of data in support of Section 301(h) permit modification request are solely the responsibility of the requesting municipality and are not grant eligible. Where Section 201 or 205(g) funds are used, the areal extent of waste load allocation and water quality data collection activities must relate directly to needed waste load allocations for projects that are on the State 5-year construction grant priority list.

The priority for use of Section 201 and 205(g) funds to conduct waste load allocations and water quality analyses is:

1. POTWs which have been determined by EPA and the State, as a result of a PRM 79-7 review, to require a revised waste load allocation.

2. POTWs on the State 5-year construction grant priority list for which the State and Regional Administrator have determined, through the State/EPA agreement process, that existing waste load allocations are probably insufficient to support AST/AWT requirements.

SAM 37 continues to apply to the use of FY'78 and 79 Section 208 funds for waste load allocations and water quality analyses. FY'80 Section 208 funds may not be used to initiate POTW-related waste load allocations.

Procedures

1. FY 80 State/EPA Agreement: If Section 201 or 205(g) funds are to be used for waste load allocations, the FY 80 State/EPA Agreement (SEA) must contain or provide for the development of a detailed State review of the 5year construction grant priority list. Specific provision for the review may be contained in the SEA itself or in the Section 106 program plan or the 205(g) delegation agreement. Wherever a POTW has effluent limitations potentially requiring AST/AWT and Section 201 and 205(g) funds may be used, the SEA, Section 106 program plan or 205(g) delegation agreement shall provide for:

- an informal review of applicable water quality standards to determine whether they contain unsupported requirements or criteria; e.g., blanket discharge prohibitions or criteria substantially more stringent than contained in Quality Criteria for Water or any subsequent criteria documents published by EPA.
- the review of existing waste load allocations, if any, to determine whether they are technically valid and sufficient to support AST/AWT effluent limitations.
- the review of any other water-quality based permit limitations not derived from water quality standards or waste load allocations to determine whether they are valid.

Wherever the State and EPA determine that an effluent limitation is not valid or supportable, the State shall provide a program to rectify the inadequacy. One component of this program shall be a list of projects for which it is necessary to substantiate inadequate AST/AWT effluent limitations. This list should subdivide these projects into those requiring new or revised waste load allocations and those requiring other work. Projects requiring new or revised waste load allocations should be subdivided into the two priority classes described above. Until this listing is complete, Section 201 and 205(g) funds may not be used to fund waste load allocations.

For all cases where the State has determined that effluent limitations are unsupported for reasons unrelated to waste load allocations, the priority of resolution shall be determined by the State and Regional Administrator.

2. Funding: The SEA shall allocate costs to produce valid effluent limitations as follows:

- Section 106 funds may be used in any situation.
- where tasks relate to the basin-wide revision of waste load allocations, or to waste load allocations/water quality analyses not directly related to a POTW on the SEA needs list, only Section 106 or State funds may be used.

Section 201 and 205(g) funds may be used to augment Section 106 funds for priority one projects upon issuance of this memorandum. Section 201 and 205(g) funds may be used to augment Section 106 funds for priority two projects upon EPA approval of the State waste load allocation program.

3. Headquarters Assistance: PRM 79-7 provides for OWPO and OWPS review of the adequacy of effluent limitations and facility planning for certain proposed AWT facilities. Upon request, OWPS will provide technical assistance and advice on the review of existing water quality standards and waste load allocations, the development of work programs, and on draft work products.

4. Relationships: The use of Section 201 and 205(g) funds for waste load allocations and the involvement of 201 grantees is new so that additional guidance is necessary:

- ° responsibility for the validity of waste load allocations lies with each State in accordance with Section 303(d)(1)(C) and 303(e)(3) of the Clean Water Act.
- ° accountability for Section 201 funds used for waste load allocations and supporting water quality analyses will rest with the Section 201 grantee even though the grantee may execute a contract or intergovernmental agreement with the State or the State and an areawide 208 agency to perform the work.
- ° in order to prevent a conflict of interest, it is recommended that waste load allocations and supporting water quality analyses not be conducted directly by the Section 201 grantee. It is recommended that the Section 201 grantee instead execute a contract or intergovernmental agreement with either the State or the State and an areawide 208 agency, which may subcontract the work, if necessary.
- ° wherever Section 201 funds are to be used for waste load allocations/ and water quality analyses, the scope and schedule of work and the consultant contract shall be approved by the State and EPA. The terms of this approval shall be made a condition of the grant and shall be contained in a memorandum of understanding entered into by EPA, the State, the 201 grantee, and, when appropriate, the areawide 208 agency. EPA and the State should be intimately involved in all phases of the work as discussed in the attached management guidance.
- ° the conduct of joint waste load allocations is encouraged.

Some previous waste load allocations funded by EPA ultimately failed to be valid because of inadequate data, inexperienced personnel and improper use of mathematical models. Consultant contracts should include specific performance standards and a quality assurance program covering, where applicable, model calibration and verification, sampling and analytical methodologies, statistical adequacy of data, and personnel requirements (see the attached management and technical guidance).

5. Municipal Enforcement Strategy: The "Final National Municipal Policy and Strategy for Construction Grants, NPDES Permits, and Enforcement Under the Clean Water Act" (August 1979) provides that for projects undergoing an AWT review, NPDES permits should not generally be reissued until this review is completed. Procedures for modifying or reissuing permits for these projects are detailed in this document.

Attachments:

Management Guidance
Technical Guidance

Management Guidance for Funding of WLA Studies

Background

In order to ensure that grant funds for WLAs are used in an effective and efficient manner, OWPS will be working with the Regions to ensure that all Regions using 106, 201, 205(g) or 208 funds for WLAs have atleast a minimal technical capability in the WLA program area. In addition, there should be a strong State program in this area or a committment by the Region to guide and take responsibility for WLA work done in States lacking a strong WLA program. This part of the guidance describes what factors Headquarters will consider in evaluating the Region's technical capability in the WLA area. It also addresses what factors the Regions should use in evaluating State WLA programs.

I. Regional Management Guidance

OWPS is presently conducting a study of the AWT/WLA program in each Region. Each regional contact has received a copy of the draft report on their Region for their comment and review. Our aim is to work with any Region needing assistance to ensure that all Regions develop the necessary minimal technical capability by FY 80.

Based upon our work thus far, the following factors appear to be critical:

(a) Regional Staffing Levels

The Region should have an identifiable staff for guiding and reviewing:

- Work-plans for development of WLAs
- Contract Work Statement for WLAs
- Interim output of WLA Studies
- Final WLA
- State WLA effort

(b) Regional Staff Qualifications

Staff responsible for overseeing WLA work must include individuals trained and experienced in all aspects of the development of WQ based effluent limits, e.g., planning and conduct of WQ intensive surveys, mathematical modeling of receiving waters including calibration/verification, etc.

II. State Management Controls for 201 and 205(g) Funded WLA Studies

1.

(a) The State must have an identifiable staff which is qualified and capable of, developing if necessary, or guiding and reviewing:

- Work Plans for development of WLAs
- Contract Work Statement for WLAs
- Interim outputs of the WLA Study
- Final WLA

(b) State Staff Qualifications

Staff responsible for overseeing or developing WLA studies must include at least one individual trained and experienced in all aspects of the development of WQ based effluent limitations, e.g., planning and conduct of WQ intensive surveys, mathematical modeling of receiving waters including calibration/verification, etc.

2. EPA approved State Procedures

State technical procedures and policies, (including math models used, safety margins, data requirements, modeling assumptions, etc.), for WLA development must be documented by the State and reviewed and approved by the Region.

3. EPA approved WQ Standards

EPA approved WQ standards must be in place prior to commencement of the study.

4. Procedures for approval to initiate a WLA Studies

The State and Region must guide the development of WLA, and review and approve the following prior to initiation of the study:

(a) Remedies to previous deficiencies

Deficiencies that caused the original WLA to be rejected must be identified and solutions or remedies proposed.

(b) Selection of contractor/consultant to perform the WLA

This selection must be jointly made by the grantee, State and Region, and should be based largely on the contractor's previous performance in conducting such studies.

5. Work Plan for development of the WLA

A detailed work-plan must be developed by the grantee (or contractor). The work-plan must include details on all tasks necessary in the development of the WLA. The major elements of the study will be (1) Data Needs and Collection (2) Water Quality Analyses/modeling and (3) Allocation of pollutant loads and determination of effluent limitations on the basis of the WQ analysis. Tasks for each element must be described in detail, including description of work, cost, output of the task and projected date of completion.

(a) Approval of Work-Plan

The Work-plan must be reviewed and approved by the State and EPA prior to conduct of the study. The plan will serve as the guiding document for development of the WLA.

(6) State-EPA tracking of the Study

The Region and State must closely scrutinize every major output of the study as it proceeds. A review mechanism must be developed, which will provide for timely reviews with recommendations for any mid course changes necessary.

The study should proceed in stages or phases that are designed to produce concrete reviewable outputs at the end of each phase. EPA and the State must review each output prior to initiation of the next phase. Errors or shortcomings must be flagged immediately, and steps taken to correct the situation before the study resumes.

Preliminary Technical Guidance for WLA Studies

Objectives

This package provides technical guidance on development of WLA's. The guidance establishes the basis for a credible procedure for WLA computations. Experience concerning what to emphasize has come from EPA water quality reviews of POTW projects requiring treatment more stringent than secondary. EPA's concern is that all future WLA's be sound, reasonable, and technically defensible.

This preliminary guidance will be refined and improved. Comments are encouraged.*

It is EPA policy (PRM 79-7) that: "That Agency will conduct a rigorous review of projects designed for treatment more stringent than secondary"; and, with respect to WLA, that: "The waste load allocations or other analyses resulting in the effluent limitations, along with the assumptions on which the analysis is based, are scientifically supported by intensive water quality surveys or appropriate field investigations conducted on the water bodies in question, and calibrated and verified models or other technically sound analyses".

This guidance seeks to aid these policies and presents information on:

1. the typical level of analysis expected for most WLA studies to satisfy EPA review. Exceptions, of course, are possible and should be justified. Examples are simple cases needing only "desk top" computations or complex cases needing very specialized mathematical models.

2. a "norm" for a scientifically defensible WLA procedures. A justification process that follows the norm would not be expected to cause controversy in the EPA review. Departures from the norm should be discussed and rational explanations presented.

3. the list of representations and presentations that a well documented WLA should have according to current EPA review procedures.

4. a checklist of problem areas that have stalled EPA WLA reviews, or which are expected to cause difficulties in scoping future WLA studies; these areas will be further clarified as this guidance is refined.

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*Comments should be directed to Dr. Tim Stuart (FTS-426-7766), Chief Monitoring Branch, Monitoring & Data Support Division (WH-553)

EPA Expectations

The typical situations are described in this section. Unusual situations, as they occur, will be judged as departures from the following normal factors and criteria. The logical core of typical WLA analyses and water quality concerns can be summarized with three main points.

1. For most projects, EPA anticipates that the WLA will be based on dissolved oxygen and/or nutrient (N,P) water quality criteria. Of course, other water quality criteria will be considered when relevant to the particular project being reviewed. (A significant additional criterion is ammonia, in relation to fish toxicity). Within this context:

    a. If D.O.-related WLA's are proposed (BOD, NH3/TKN, reaeration), specify the D.O. criterion in the WQS for the surface waters in question. Are there minimum and average components in the D.O. criterion?

    b. If nutrient (N or P) WLA's are proposed, are there numerical ambient criteria for these nutrients, if yes, specify. If not, are there other provisions in the WQS that address nutrients, such as narrative criteria that water should be free from aquatic nuisances, algal counts, chlorophyll criteria? Explain.

    c. If WLA's are proposed for parameters other than those related to D.O. or eutrophication, are there provisions in the WQS for their control?

2. EPA will use the following criteria when evaluating WLA's related to dissolved oxygen (BOD, TKN, reaeration.)

    a. A steady-state, Streeter-Phelps-type analysis or model (considering both carbonaceous and nitrogenous wastes) at the critical flow condition is acceptable, unless existing water quality data or the hydraulic setting clearly indicates significant time and flow varying D.O. problems.

    b. The predictive capabilities of the analysis/model must be adequately demonstrated. This can be accomplished through calibration and verification using two independent sets of water quality data for the receiving water in question. If calibration and verification are not done, the WLA documentation must explicitly describe how the predictive accuracy of the analysis was established.

c. Weather-related nonpoint sources (NPS) loadings do not have to be considered directly in low-flow situations; however, the analyses should make reasonable allowances for any leachates, benthic oxygen demands, and background D.O., BOD, and ammonia.

d. An analysis based on historical data should have been made to determine the critical conditions for streamflow and temperature if not prescribed by State WQS.

e. If the critical flow situation is not a low flow, then it must be indicated how NPS loadings were considered; this is particularly true for combined-sewer situations.

3. EPA will use the following criteria when evaluating WLA's for nutrients (P, N):

    a. The analysis must demonstrate why a nutrient/eutrophication problem is anticipated based on existing ambient water quality data and field observation.

    b. Sources and loadings of nutrients from both point sources and NPS must be evaluated, including estimates of the relative contributions from each. Annual mass balances should be presented.

    c. The analysis must indicate how the limiting nutrient was identified and evaluated for the water body in question.

    d. The analysis must indicate how the decision criteria for maximum nutrient loadings were established for the water body in question.

    e. If NPS loadings will be the major source of nutrients after the proposed plant is operating, the justification must describe what BMP's were considered and selected or rejected. How and when will the BMP's be implemented?

Scientifically Accepted Procedures

The objective of this section is to define an approach to the methodology of wasteload allocation. The approach anticipates linkages to coordinate complex analysis techniques. Analysis and the related policy problems are complicated by a large number of interacting factors. Among these factors are included: point source (PS) wasteloads, nonpoint source (NPS) loads contained in land washoff, possible combined sewer overflows (CSO) and interactions of meteorologic conditions that effect pollutional stress including streamflow, rainfall and water temperature.

Within this framework there exist mathematical computer models with which the environmental impacts to water quality can be studied. These models range from simple to complex. Models are tools for estimation of water quality impacts for constant or steady pollutant loads. The intent of EPA is that when one uses complex models to handle a complex situation, the margin of safety for load allocation can be reduced.

Water Quality Standards

The WLA approach assumes that stream standards are given, and are consistent with the designated use classification of the receiving stream. In this regard, it should be noted that all waters, including intermittent streams, regulated by State water quality standards must be classified and meet the criteria applicable to that classification. These standards may provide for time-limited variances for specific dischargers, as long as existing uses are protected. In general, a specific variance proceeding is preferred to a general downgrading.

Where intermittent streams do not currently meet designated uses and cannot attain these designated uses due to 1) natural background features; 2) irretrievable man-induced conditions; or 3) widespread adverse economic and social impact (See 40 CFR 35.1550 (c)(2)), a downgrading is warranted. However, no downgrading may impair or preclude existing water uses. EPA is developing guidance on downgrading of use classification based on widespread adverse economic and social impact (item #3 above).

Wholesale downgradings are not permitted, and would violate EPA regulations 40 CFR 35.1550.* Also, intermittent streams often serve an important role in stream ecology as spawning and feeding grounds. Therefore, to determine whether a downgrading from the "fishable" classification is warranted, a site-specified investigation of the particular intermittent stream segment by qualified engineers or scientists is required. For downgrading to be approved based on natural background or irretrievable man-induced conditions, this field survey would have to show that the site does not support fish survival or propagation, and even with discharges at normal levels meeting existing water quality standards would not support a fishable use.

The link between wasteload allocations and stream standards is a mathematical model to predict water quality as a function of waste discharges. Such models exist and are integral parts of the methodology. For such a method, the wasteloads are one of a set of required input data. Other members of the set include: geometric definition, upstream and tributary streamflows, water quality of streamflows, quantification of forces other than gravity that influence the water movement including tides and radiation, and parameters that define the transformations of the water quality.

The WLA methodology has the following elements, any of which may be greatly simplified given technical justification:

1. Based on a preliminary review of the discharge site and the expected impact of the pollution load, selection of a model is required. This model should be calibrated and verified for use in the WLA. For DO, the normal model will be a Streeter-Phelps type (Considering both carbonaceous and nitrogenous waste) unless circumstances dictate otherwise. For nutrients, a rational and defensible approach should be defined; a typical acceptable method for a lake is an annual mass balance linked to a Vollenweider assessment.

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*Refer to OGC #58 dated March 29, 1977.

2. A determination of the magnitudes of the wasteloads as a function of location and future population and land use.

    a. The point source loads are subjected to various treatment levels in accordance with current policy and may be transported to various points according to different local and regional collection schemes. The array of these possibilities becomes the alternative set for allocation analysis.

    b. The NPS loads may or may not be a factor in the final WLA. At the beginning of a WLA analysis, NPS loads must be evaluated to determine if they should be directly considered in situations involving nutrients and eutrophication.

3. A determination of what constitutes the "design event" or critical conditions is required. The design event, expressed in terms of such variables as streamflow, temperature and waste discharges, describes a specific condition under which water quality standards must be met. One allocates waste loads for the design event but should, if appropriate, make allowances for seasonal variability. This design event takes into consideration discharger exemptions from portions of WQS, when natural background conditions, such as flow, naturally high pollutant concentrations, etc. preclude attainment of some existing or designated uses. However, all WQS required to support uses that exist under low flow conditions must be met. Furthermore, effluent must not cause a nuisance, due to objectionable deposits, floating debris, or objectionable color, odor, taste, or contain toxic pollutants in toxic concentrations.

    For point source loadings, low summertime flows are usually used. For nonpoint source loadings no usual condition or standard of practice exists. In some cases, the problem of defining the "design event" can be avoided by using continuous simulations with a mathematical model. A continuous simulation continuously translates a time series of hydrologic, meteorologic and wasteload conditions into a continuous representation of water quality. The results of continuous simulations can be inspected and the failure frequency can be evaluated more directly.

4. The acquisition of data pertaining to how the waters respond to wastes is necessary. Either existing data may be assembled, or a field program is needed. Such field programs should be of short, intense duration and should measure waste inputs and water quality responses simultaneously for at least two separate situations (high and low flows or warm and cold water or two other events for which water quality responses are different for the same receiving waters).

5. EPA recognizes the concept of tranferability of water quality data from one discharge site to another similar discharge site. However, it should be emphasized that transferability, although an acceptable concept, is not applicable in every situation and calls for considerable judgment on the part of the water quality analyst to determine whether a situation is amenable to modeling based on transferred water quality data. EPA is currently developing detailed guidance on the use of transferred water quality data, and the criteria and constraints within which such transference may be attempted.

6. The fitting of the forecasting method (mathematical model) to the data is necessary. A two data set approach is the standard practice:

   a. The first data set is used to adjust the transformation parameters of the model until observed water quality agrees with forecasted water quality. This process is called calibration.

   b. The second data set is used in the calibrated model to independently check the forecast. If the model can forecast the second data set the model is verified.

7. The forecasting of water quality for the "design event" using alternative WLA's is conducted in order to prescribe the WLA. Two strategies are possible in the implementation of this element, each of which is oriented to determining whether or not carrying capacity is sufficient to prevent violation of water quality standards.*

   a. The alternative projected loadings can be individually analyzed and the water quality forecast. Degree of treatment levels are gradually increased until the water quality standards are satisfied.

   b. It is possible to work directly with the carrying capacity. The maximum amount of wasteload that can be introduced into the water and still satisfy the water quality standards is determined. This amount is allocated to the dischargers.

8. An analysis of the impacts of errors, or changes in parameters, forecasts, and modeling assumptions upon the wasteload allocation is desirable. This sensitivity analysis is useful for the WLA review process.

*Note that Section 303(d) of the Clean Water Act and EPA regulations require that an margin of safety be included in the WLA. Also, note that nondegradation requirements apply for the National Resources Water listed on page 6 of PRM-79-7.

The methodology of wasteload allocation studies is complex and the normal mathematical model is a Streeter-Phelps type that handles carbonaceous and nitrogenous components. Other methods exist and all methods, from simple hand calculations to computer models, require a detailed data base describing the quality and the hydrology of the receiving waters. Water quality data should, if possible, quantify and qualify the following physical, chemical, and biological parameters: BOD, dissolved oxygen, nitrogen, phosphorus, total dissolved solids, pH, coliforms, chlorophyl-a, biomass information, eutrophication evidence, temperature, suspended solids, turbidity, and sediment. Other parameters related to domestic wastewater may be needed in specific cases.

The hydrologic description of the receiving waters generally requires stream flow data, velocity data, location of tributaries and point source discharges, nonpoint source contribution rates, water withdrawal rates and other alteration of natural stream flow. Stormwater discharges are also of importance to many models as are meteorological data and stream channel geometry.

Modeling the impact of nonpoint source pollution requires additional input concerning land use, topography, and soil types.

The particular emphasis and specifics of each method and site determine the level of detail as well as the specific categories of data required for an analysis. Current thinking is that two intensive surveys of a one to two weeks duration be conducted to support such studies. One survey supports model calibration and the other supports model verification. A rule-of-thumb for effort expended in field activities is that they should be budgeted to the same or higher levels as the modeling analyses.

Documentation for Evaluation

An EPA WLA review is thorough and detailed. The information needs for the review cover the water quality management field: Water uses, water classifications, benefits of cleaner water, standards, data, modeling and WLA. A list of twelve information areas is presented here to specify the detailed documentation necessary to thoroughly justify a WLA:

1. Definition of receiving water, its uses and possible health issues (maps with demographic features) and the general hydraulic/physical setting (velocity of waters, gradient, lake or estuary, dimensions of impact or recovery zone, nature of bottom such as sandy or rocky and similar details).

2. Specification of impact zone, existing water quality (show data and evidence of problems) and of future water quality with proposed facility (for examples give modeling results) and of existing aquatic growth problems if nutrients influence level of treatment.

3. Justification and defense of design condition (low flow, water temperature).

4. Presentation of numerical standards, their relation to uses and stream classifications and their consistency with Red Book criteria.

5. Statement that existing water quality meets adopted WQS, or where disparities exists, indicate whether downgradings or upgradings are warranted. (Since most classified streams are designated for fishable/swimmable uses, proposed downgradings will probably predominate.) Downgradings must be justified on one of the three grounds described on p. 3, as specified in the WQS regulation 40 CFR 35.1550.

6. Specifications of previous field surveys and data used to support the analysis (quality versus time and quality versus distance graphs are very useful as well as details of measurements of waste inputs, instream quality and hydraulic variables) including, if possible, biological surveys and findings.

7. Tables of annual nutrient loads by category, PS, NPS, background and by limiting factor (if nutrient problem impairs water use).

8. Details of determination of an allowable nutrient loading with linkages to nutrient removal requirements (permissible area loading to lakes and National Eutrophication Survey procedures are typical level of detail).

9. Technically sound and detailed analysis of NPS and their relationship to treatment requirements (pull together Basin Plan, 208 and any EIS studies and tie it into presentation).

10. Presentation, specification, and discussion of methods (models or otherwise used to analyze field data, calibration and verification) and give the projections and waste load allocations.

11. Tabulation of calibrated model parameters (carbonaceous decay, nitrogenous decay, aeration, benthic uptake, temperature correction factors, logarithmic base (10 or e), and related parameters with justifications of their selection).

12. Tabulation of existing and proposed effluent flow and strength; include nearby PS and NPS data to show relative importance of proposed project.

Checklist of Problem Area

This list identifies typical "flaws" observed in materials presented in support of WLA justifications:

1. Hard data are not presented. Observed data from instream sampling and effluent sampling both in graphical and tabular form are desirable to enhance WLA justifications. The data should be matched by descriptions of how samples were obtained; e.g., grab samples, composite samples, diurnal effects, etc. In addition, the standards should be stated numerically. NPDES permits, existing and proposed, should be included.

2. Modeling results presented have not shown demonstrated calibration and/or verification. Also needed is the rationale for rates used and for model inputs, particularly where these differ from field measurements or particulars presented elsewhere in supporting documents. The modeled results should demonstrate consistency with other project justification presented.

3. Benefits of stream clean-up as the result of project implementation have not been well presented. Typically absent from materials presented have been details of instream water quality standards violations or public health problems that the project, as implemented, would alleviate. Administrator approval of projects is ultimately based upon such justification.

4. Maps are not detailed enough or are absent. "A picture is worth a thousand words" is a dictum relevant to WLA justifications.

5. Regional Context and the role of NPS and BMP's have been downplayed. The project as implemented should result in significant improvements to water quality and/or the public health. Beneficial results of the project should not be negated by NPS problems that are not addressed.

6. Blanket effluent discharge limitations often appear unjustified. They often do not show thoughtful application to the specific situation.

7. Design treatment flows, population and flow projections often seem overstated.

8. Critical design conditions are too stringent based on expected probabilities. In particular, it may not be reasonable to use the highest one-day temparature of record for any time of year, with a criterion such as 7Q10 low flow. Temperatures used in steady-state low-flow analyses should be weekly averages that would occur during the same calendar period as the low-flow event.

In addition to these "short run" flaws that will disappear as this methodology is standardized, there is the major question of model selection. This issue is expected to dominate the efforts to enhance and refine this guidance.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

20 DEC 1979

Construction Grants
Program Requirements Memorandum
PRM 80-2

SUBJECT: Step 2 and Step 3 Architect/Engineer Level of Effort Study

FROM: Henry L. Longest II
Deputy Assistant Administrator
for Water Program Operations (WH-546)

TO: Regional Administrators
Attention: Water Division Directors

PURPOSE

The purpose of this memorandum is to initiate a multi-phase approach to establishing final Agency policy and guidance for evaluating the price for architect/engineer (A/E) services during Step 2 and Step 3 projects funded under the Construction Grants Program. In addition, it provides interim guidance for this evaluation which is to be used until the final policy and guidance are promulgated. For the purpose of this memorandum, the terms cost, price and profit have the meanings conveyed in 40 CFR 35.936 and 35.937.

The specific phases are as follows:

Phase 1. Pending development of final Agency policy and guidance discussed below, "Exhibit II" of the EPA Region VI publication entitled *Engineering Costs and Fees for Municipal Wastewater Treatment Works, An Estimating Technique for Design of Treatment Plants*, Publication No. EPA 906/9-78-003, may be utilized as an additional tool in analyzing the cost segment of A/E services to design treatment plants funded under the construction grants program. Profit should continue to be analyzed in accordance with specific policies or guidelines you currently use. These reviews of cost and profit should be initiated only when the grantee employed Brooks-bill type negotiations or otherwise did not consider price (the sum of cost and profit) as the prime criterion in selection of the engineer.

Phase 2. A computer model will be developed to provide estimates of the level of effort (work-hours) required to design treatment facilities (including sewers) of varying sizes and types. The model will also provide estimates of the level of A/E effort required during the Step 3 phase of a project.

Phase 3. Each Regional Office will accumulate level of effort and related information on recently completed Step 2 and Step 3 projects in its Region. This phase will be done simultaneously with Phase 2.

Phase 4. The information obtained from Phase 3 will be used to verify and "fine tune" the computer model being developed during Phase 2. It will also be used to develop a family of curves or charts relating work-hours, and perhaps price, for elements of Step 2 and Step 3 services to the size and type of treatment works. These curves or charts can be used separately or in addition to the computer model when it becomes available. These curves or charts will be prepared by an EPA task force which includes Headquarters and Regional Office personnel. The exact nature and format of the guidance documents has not yet been determined.

Phase 5. The curves or charts and computer model, when fully operational, will be used by Regional Office personnel, State Agency personnel and grantees in conjunction with appropriate cost, overhead and profit data, to determine if the price proposed by the engineer is reasonable.

DISCUSSION

Since publication of EPA regulations governing procurement of A/E services in December 1975 which prohibited A/E contracts based upon a percentage of construction cost or cost plus a percentage of cost, EPA Regional Offices have had a difficult time determining if the proposed price of A/E services was fair and reasonable. Most of the attention has focused on review of the profit segment of the engineers price and the State of California and several Regional Offices have developed policies and guidance for evaluating profit. This has led to numerous complaints about the lack of a uniform policy and the disparity in application of similar guidelines among the ten EPA Regions.

Based on data accumulated from firms and projects in its Region, Region VI developed the publication referenced above as a guide for reviewing the cost segment of A/E services to design treatment works. The cost data is probably not applicable to other Regions, but we believe that the estimate of work-hours required to design various type of treatment plants, which is shown in Exhibit II of that publication, may be a useful additional tool in analyzing the work effort required to design plants in other Regions. However, in utilizing the Region VI publication for this purpose, consideration must be given to regional differences in design due to climate and other factors, established State or local practice as to the number of construction contracts required, level of detail shown on plans, an individual firm's approach to design and changes in Agency Regulations since the Region VI data was collected. By applying an engineer's salary scale to the work-hour estimate, as modified by the previously cited considerations, adding other direct expenses and applying the appropriate overhead rate, a reasonable estimate of the cost segment of A/E services for design can be determined.

Our objective is to expand the Region VI study to incorporate data from all other Regions. To accomplish this, we are requesting that members of your construction grants staff extract required information from your files and visit A/E firms in your Region to collect level of effort and other data related to activities such as preparation of plans and specifications, preparation of UC/ICR systems, preparation of plans of operation, including O&M Manuals, resident engineering services during construction and other Step 2 and Step 3 engineering services. The visits may be combined with your other activities such as review of financial systems and records or consultation on other matters. To assist in this effort, Mr. Le Young of Region VI and a cost/price analyst will spend a week to ten days with your staff to explain the methodology and procedures to be used in collecting the required data and may accompany them on some of the field visits.

The cooperation of the consulting engineers is essential to the success of this effort. Therefore, it should be explained at the outset, that as a result of this study, more emphasis will be placed on the fairness and reasonableness of the price of A/E services and less on level of profit. Also, experience in Region VI showed that it is helpful to seek the cooperation and assistance of the professional societies such as the American Consulting Engineers Council, American Society of Civil Engineers, National Society of Professional Engineers or similar professional organizations. Representatives of these organizations at the national level are acting as advisors to the EPA task force.

The Corps of Engineers, in cooperation with EPA, has developed a computer model, known as CAPDET, which, when given certain basic information, provides preliminary designs and construction cost estimates for treatment facilities of various types. This system is to be expanded to provide an estimate of the level of A/E effort (work-hours) required to design and construct treatment facilities. It has been decided to estimate "level of effort" rather than cost so that the model will be applicable nationwide and will not be quickly outdated by inflation. However, the model will be capable of translating level of effort information into dollar values when the appropriate cost information (labor rates, indirect costs, other direct costs) and profit levels are entered into the computer system.

The computer model will be developed by consultants under contract to the Corps of Engineers operating under an Interagency Agreement with EPA. The initial contract for this work is expected to be executed in the near future and the development of the computer model will be done concurrently with the Regional data gathering.

IMPLEMENTATION

When the grantee employed Brooks-bill type negotiations, or otherwise did not consider price (the sum of cost and profit) as the prime consideration in selection of the engineer, Exhibit II of the Region VI publication may be used as an additional tool in determining whether the cost segment of A/E services is reasonable. Profit should continue to be analyzed in accordance with specific policies or guidelines you currently use until such time as a decision is made as to the advisability of establishing National Guidelines. Further guidance for review of profits will be provided in the near future.

It is requested that an appropriate person be designated to coordinate your participation in this study. Please advise James R. Murphy, Chief Eastern Construction Branch at (FTS) 426-8945 as to the name and telephone number of the person so designated. Mr. Murphy can also answer any questions you may have regarding this PRM.

In the near future, the appropriate Area Program Manager will contact your designee to arrange for Mr. Young's visit to your Region.

The methodology, work plan and schedule, and appropriate guidance for the conduct of this study are being developed by Headquarters and will be mailed to you as soon as the material is completed. Should you need additional copies of any document referenced in this memorandum, they are available from the Municipal Construction Division, EPA Headquarters.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

MAY 30 1980

Construction Grants
Program Requirements Memorandum
PRM # 80-3

SUBJECT: Management Reforms to Reduce the Time Interval Between Step 3 Grant Award and Initiation of Construction (Property Acquisition, Local Share Funding, Service Agreements and Cultural Resource Investigations)

FROM: Henry L. Longest II, Deputy Assistant Administrator for Water Program Operations (WH-546)

TO: Regional Administrators (I-X)
ATTN: Water Division Directors

INTRODUCTION

We have identified a number of problem areas within the construction grants program which are causing delays in the preconstruction phase of Step 3 projects. This memorandum is being issued to implement management reforms that will minimize many of these delays.

This memorandum sets forth agency policy in the following four areas:

1. Acquisition of real property (including easements).
2. Local funding requirements.
3. Service agreements.
4. Cultural resource investigations.

The appropriate provisions and procedures contained in this Program Requirements Memorandum will be incorporated into any proposed revision to construction grant regulations.

SECTION A - ACQUISITION OF REAL PROPERTY (INCLUDING EASEMENTS)

PURPOSE

The purpose of this section of the memorandum is to clarify agency policy regarding the time frame within the grant process for the acquisition of real property, including the taking of easements.

DISCUSSION

Current Environmental Protection Agency (EPA) regulation 40 CFR 35.920-3(b)(2) requires, as part of a Step 2 grant application, "Adequate information regarding availability of proposed site(s), if relevant." PRM 77-6 expands on this point and requires the grantee to perform preliminary easement related work concurrent with other Step 2 work. PRM 77-6 also requires the regional office to consider the need (on a case-by-case basis) for the grantees to undertake the actual taking of easements and/or acquisition of sites during the Step 2 process. EPA regulation 40 CFR 35.935-3(b)(3) requires the grantee to obtain all property rights before the initiation of Step 3 construction. At the present time, there is no EPA policy that clearly describes the action that must be completed prior to Step 3 grant award. Consequently, initiation of construction is delayed on many Step 3 projects until the grantee has obtained the required property rights. This policy statement is intended to establish procedures that would minimize this delay.

POLICY

It is EPA policy that all real property (including easements) be obtained, or bonafide options taken, or formal condemnation proceedings initiated, prior to Step 3 grant award, unless the action is prohibited by State or other Federal Agency requirements.

The term "bonafide option" refers to an irrevocable commitment on the part of the landowner to transfer to the grantee an interest in land at a specified price. Such options should provide for an expiration date, normally at least one year, and must be supported by adequate consideration and include any other applicable requirements necessary to make the option enforceable under State and local law.

IMPLEMENTATION

Effective October 1, 1980, no Step 3 grant is to be awarded until the grantee has submitted assurances that all required property rights as defined in 40 CFR 35.935-3(b) have been obtained, or bonafide options taken, or formal condemnation proceedings initiated, except for those situations noted below. This assurance can be in the form of a certification or other documentation established by the Regional Administrator.

The assurance requirement would exclude the acquisition of land to be used for sludge disposal or land treatment, as the costs of such acquisitions are eligible for Federal participation under a Step 3 grant, but would become unallowable if incurred prior to Step 3 grant award (see PRM's 75-25, 75-39, 77-5, 78-4 and 40 CFR 35.940-3). However, amendments to construction grant regulations published July 5, 1979, authorize the Regional Administrator to use his discretion in permitting grantees to proceed with the acquisition of eligible land after approval of the facilities plan in advance of the normal Step 3 award either by (1) award of a Step 3 segment consisting only of purchase of eligible land, 40 CFR 35.920-3(c)(2) or (2) approval of the grantee's preaward cost for the purchase of eligible land, 40 CFR 35.925-18(b). In the case of a Step 3 grant awarded solely for the acquisition of eligible land, compliance with the requirements for approved user charge/industrial cost recovery systems, operations and maintenance manuals and sewer use ordinances are deferred until the award of the ensuing Step 3 assistance for the construction of the facilities, 40 CFR 35.930-1(a)(1). All grantees are encouraged to make maximum use of the advance acquisition provisions. In addition, the regional offices or delegated State agencies, should recommend the use of the advance acquisitions provisions in situations where the implementation of the procedures would accelerate the initiation of construction. However, the review/approval provisions contained in PRM 79-7 must be completed prior to the purchase of grant eligible land for projects where treatment more stringent than secondary is anticipated.

In addition, the assurance requirement would exclude the acquiring or taking of property rights, or bonafide options, or initiating formal condemnation proceedings, if the action is prohibited by State or other Federal Agency requirements. However, the grantee must complete all site acquisition work required for the Step 3 grant that is not prohibited by State or other Federal Agency requirements.

In the situation where the acquisition of property rights, or bonafide options, or initiation of formal condemnation proceedings, prior to Step 3 grant award, is prohibited by EPA, State, or other Federal Agency requirements, the grantee should submit the following information for each property site excluded from the assurance requirement:

1. The appropriate designation (parcel number, reference code, etc) for the property site.

2. The State or Federal requirement that prohibits the acquisition of property rights, or bonafide options, or initiation of formal condemnation proceedings, prior to Step 3 grant award.

3. Future actions required to obtain the property or property rights, and a schedule for these actions.

4. Assurance that all site acquisition work not prohibited by State or Federal requirements has been completed.

Allowable project costs incurred in the implementation of the procedures contained in this policy statement, e.g., costs incurred under the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, should be included in the Step 2 grant. If necessary, the Step 2 grant should be amended to include these costs.

REFERENCES

40 CFR 35.920-3(b)(2)
40 CFR 35.920-3(c)(2)
40 CFR 35.925-18(b)
40 CFR 35.930-1(a)(1)
40 CFR 35.935-3
40 CFR 35.945(g)
40 CFR Part 4

PRM 79-7, "Grant Funding of Projects Requiring Treatment More Stringent than Secondary," March 9, 1979.

This policy statement supercedes PRM 77-6 issued May 4, 1977. PRM 77-6 is hereby cancelled.

SECTION B - LOCAL FUNDING REQUIREMENTS

PURPOSE

The purpose of this section of the memorandum is to establish Agency policy to assure that the applicant has reasonable access to funds required to finance the non-EPA share of the Step 3 project costs.

DISCUSSION

EPA requirements concerning the grantee's ability to finance the non-EPA share of the construction costs is contained in 40 CFR 35.925-5, 35.935-1(c) and the assurance statement requirements of the "U.S. Environmental Protection Agency Application for Federal Assistance (Construction Grants)." In Part V of the application, the grantee assures and certifies that it will have sufficient funds available to meet the non-EPA share of the cost for construction projects. In Part III, Section D, of the grant application, the applicant describes the proposed method for financing the non-EPA share of the project. At the present time there is no EPA requirement for the grantee to initiate financial arrangements prior to Step 3 grant award. Consequently, many Step 3 projects are delayed while the grantee is obtaining the necessary funds. This policy statement is intended to establish procedures to minimize this inherent delay.

POLICY

It is EPA policy that the grantee conduct preliminary financial planning including structuring of the financing during the Step 1 phase of the project. As much of the financial arrangements as possible shall be performed during the Step 2 phase of the project. At the time of Step 3 grant award, the financial arrangements shall have progressed to the stage that the grantee can obtain the funds required to finance the non-EPA share of construction cost within 90 days.

The Regional Administrator can authorize additional time to complete the necessary financial arrangements in situations where the State or other Federal agencies impose requirements such that the non-EPA share cannot be obtained within 90 days of Step 3 grant award. The authorization and the amount of additional time authorized should be included in the grant agreement.

IMPLEMENTATION

Effective October 1, 1980, no Step 3 grant is to be awarded until the applicant has given assurances that he can obtain the funds necessary to finance the non-EPA share of the project within 90 days of grant award. This assurance can be in the form of a certification or other documentation established by the Regional Administrator. However, the grantee should exclude from the certification requirement sources of funds that cannot be obtained within 90 days of Step 3 grant award because of conflicting State or other Federal Agency requirements.

Effective October 1, 1980, every application for a Step 3 grant must include the following information for each separate source of funds required to finance the non-EPA share of Step 3 cost:

1. The source of the funds.
2. The amount of the funds.
3. The financial arrangements completed to date.
4. Future actions required to obtain the funds, and a schedule for these actions.

For every source of funds excluded from the assurance requirement the grantee should list:

1. Items 1-4 above.
2. The applicable State or Federal requirement that prohibits obtaining these funds within 90 days of Step 3 grant award.

REFERENCES

EPA Form 5700-32 (Rev. 8-77)
40 CFR 35.925-5
40 CFR 35.935-1(c)

SECTION C - SERVICE AGREEMENTS

PURPOSE

The purpose of this section of the memorandum is to clarify EPA regulations regarding the timing for the execution of service agreements between the grantee and subscribers of the grantee, including major Federal facilities.

DISCUSSION

The Environmental Protection Agency (EPA) regulations published September 27, 1978, include a requirement for the submission of all intermunicipal agreements with a Step 2 application. Specifically, 40 CFR 35.920-3(b)(6) states that "Before the award of a grant or grant amendment for a Step 2 project, the grantee must furnish ... Proposed or executed (as determined appropriate by the Regional Administrator) intermunicipal agreements necessary for the construction and operation of the proposed treatment works, for any treatment works serving two or more municipalities." EPA regulation 40 CFR 35.920-3(c)(1) states that "final intermunicipal agreements must be furnished" with the Step 3 grant applications.

The term "executed" was used in the regulation governing Step 2 grant applications and the term "final" was used in the regulation governing Step 3 grant applications. The use of two slightly different terms to describe the same action could result in a minor misunderstanding of the regulations. In addition, the regulations do not specify the timing for the execution of service agreements between the grantee and major Federal facilities. The intention of this policy statement is to establish the time frame within the grant process when service agreements must be executed and to define EPA requirements to include service agreements between the grantee and major Federal facilities.

POLICY

It is EPA policy that the terms "final" and "executed" as used in 40 CFR 35.920-3(b)(6) and 40 CFR 35.920-3(c)(1) describe the same action and can be used interchangeably.

It is EPA policy that all agreements necessary for the construction and operation of a proposed treatment works serving a municipality and one or more major Federal facilities must be executed prior to Step 3 grant award.

IMPLEMENTATION

This policy is effective October 1, 1980.

REFERENCES

40 CFR 35.920-3(b)(6)
40 CFR 35.920-3(c)(1)
40 CFR 35.925-16
PRM 75-35, Issued December 29, 1975, with attachment issued February 20, 1976.
Memorandum on "Federal Facility Funding" dated December 18, 1978, from John T. Rhett to Regional Administrators (I-X).

SECTION D - CULTURAL RESOURCE INVESTIGATIONS

PURPOSE

The purpose of this section of the memorandum is to clarify agency policy regarding the time frame within the grant process for the completion of investigations required to identify cultural resources affected by EPA construction grant projects.

DISCUSSION

EPA regulations 40 CFR Part 6, Subpart C, 40 CFR 6.507 and the construction grants "Handbook of Procedures" state that cultural resource investigations must be integrated with the environmental review and performed during the facility planning process, however, there is currently no requirement that specifies the time frame within the grant process for the completion of these cultural resource investigations. Consequently, some investigations are not being performed in a timely fashion and portions of the work are still underway during the Step 3 phase of the project. This policy statement is intended to eliminate this delay.

POLICY

All investigations required by 40 CFR Part 6, Subpart C and 40 CFR 6.507 should be initiated during the Step 1 phase of the project and be completed prior to Step 3 grant award. However, nothing in this policy statement precludes the funding of cultural resources investigations performed during the Step 3 process, if the need for an investigation or follow-up work is not identified until that time.

IMPLEMENTATION

This policy is effective October 1, 1980.

REFERENCES

PRM 75-27 issued July 2, 1975.
40 CFR Part 6.

EXEMPTIONS

It is not the intent of this PRM to burden the grantee with unnecessary or restrictive requirements. The purpose of the PRM is to minimize the delay in the preconstruction phase of a Step 3 project. However, it is possible, especially during the initial implementation phase of this new policy, that a provision of the PRM could place an undue hardship on a grantee. If this is the case, an exemption to the requirement that is causing the problem will be considered.

All requests for exemptions should be submitted to:

Harold P. Cahill, Jr., Director
Municipal Construction Division WH-547
U.S. Environmental Protection Agency
401 M Street, S.W.
Washington, D.C. 20460

The exemption should contain, as a minimum:

(1) The name of the grantee and the grant identification number.

(2) Identification of the section of the PRM from which an exemption is sought.

(3) An adequate description of the need for an exemption including any pertinent background information which will contribute to an understanding of the problem, including any extenuating circumstances.

(4) A recommendation from the regional office.

ADDITIONAL REFERENCES

A. 40 CFR 35.935-9, Project Completion.
B. Memorandum to Regional Administrators from John T. Rhett, "Construction Grants Projects Not Yet Under Construction," November 5, 1976.
C. Memorandum to Water Division Directors from John T. Rhett, "Preconstruction Status Report," May 25, 1977.
D. POM 77-12, "Management of Preconstruction Phase of Step 3 Grants," June 21, 1977.
E. PRM 78-12, "Preconstruction Lag Management," June 12, 1978.
F. Memorandum to Regional Administrators from John T. Rhett, "Step 3 Projects Not Under Construction," December 8, 1978.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

July 18, 1980

Construction Grants
Program Requirements Memorandum
PRM No. 80-4

OFFICE OF
THE ADMINISTRATOR

SUBJECT: Implementation of Women's Business Enterprise Support Program

FROM: Barbara Blum /s/
Deputy Administrator

Eckardt C. Beck II, Assistant Administrator /s/
for Water and Waste Management

TO: Regional Administrators
Attn: Office of Civil Rights and Urban Affairs
and Water Division Directors

Purpose

To establish policies related to use of women-owned businesses.

Discussion

Executive Order 12138, issued May 18, 1979, requires EPA to establish a program of appropriate affirmative action in support of Women's Business Enterprise (WBE) and to prohibit actions or policies which discriminate against women-owned businesses on the basis of sex. Section 13 of the Federal Water Pollution Control Amendments of 1972 (33 U.S.C. § 1251 note) prohibits discrimination on the basis of sex in the distribution of benefits under or in the participation in any program or activity receiving funding under the Federal Water Pollution Control Act.

Policy

The policy of EPA is to encourage increased participation by women-owned businesses in all subagreements under EPA grants for construction of wastewater treatment works. This policy implements Executive Order 12138 and Section 13 of the Federal Water Pollution Control Act Amendments of 1972. The policy is intended to provide opportunities for immediate participation of women-owned firms in work performed under the Construction Grants Program, and to encourage the development and participation of new women-owned firms. Compliance with this policy, and the requirements under "implementation" below, shall be a condition of all EPA grants for construction of wastewater treatment works, within the limits of the "applicability" provision below.

Implementation

A. Applicability. The policies and requirements of this PRM shall be applicable to all projects for which assistance is awarded after January 31, 1981. Nothing in this PRM precludes a grantee, contractor, or consultant from voluntarily implementing these or similar policies for prior projects, and EPA encourages such action.

B. What Constitutes a Women-Owned Business. The term "women-owned business," and its variations, means a business which is at least 51 percent owned by a woman or women who also control and operate it.

1. Ownership. Determination of whether a business is at least 51 percent owned by a woman or women shall be made without regard to community property laws. For example, an otherwise qualified WBE which is 51 percent owned by a married woman in a community property state will not be disqualified because her husband has a 50 percent interest in her share. Similarly, a business which is 51 percent owned by a married man and 49 percent owned by an unmarried woman will not become a qualified WBE by virtue of his wife's 50 percent interest in his share of the business.

2. Control and operation. "Control" means exercising the power to make policy decisions, and "operate" means being actively involved in day-to-day management.

3. These are some of the factors to be considered in determining whether the requisite ownership and control exist:

   a. The percentage of stock owned in a corporation or the proportion of capital invested in a partnership.

   b. Whether ownership is meaningful (e.g., whether the woman's ownership interest is such that the woman owner can sell the business or liquidate at will, or whether the woman owner's interest is subject to a controlling lien on her interest).

   c. The provisions for sharing income and losses.

   d. Whether there is evidence that the woman owner participates significantly in business policy development and decisions of importance to the business (e.g., whether there are procedures requiring her "sign-off" on significant actions; or whether there is evidence of substantial change in actions in response to her comments).

   e. Whether corporate history indicates that the business is, in fact, woman controlled (e.g., female ownership prior to competition for a contract under this policy would be a factor tending to support validity; on the other hand, further inquiry might be appropriate if changes in ownership had occurred within a few weeks or months prior to competition, if a change in ownership involved related persons, or if the change involved the same parties in interest: i.e., a former female minority stockholder in a family business who suddenly becomes a majority.

4. Self-certification.

a. Women-owned businesses shall furnish capability statements and certification of qualification as WBEs to the grantee.

b. EPA and its grantees reserve the right to review the representation (including the right to require other evidence satisfactory to the grantee or EPA).

c. Firms which are not bona fide women-owned and controlled are not entitled to benefit from the opportunities under this policy. Those found not to meet the definition are subject to sanctions, which include a finding of non-responsibility and, in willful cases, criminal prosecution under 18 U.S.C. § 1001.

5. Credit under this policy shall be granted for WBEs performing a useful business function according to custom and practice of the industry. No credit will accrue for a WBE acting merely as a passive conduit of funds to some other, non-WBE entity, where such activity is unnecessary to accomplish the project.

C. Goals for Use of Women-Owned Firms.

1. National Goals. EPA has established a national goal of two percent (2 percent) of total prime contract dollars awarded.

2. Regional Goals. Each Region shall establish a regional goal equal to or higher than the national goal. Each Region shall establish regional goals no later than February 1, 1981. These goals shall be based on the best available information about current and potential availability of women-owned businesses. Until regional goals are established, the national goal shall be the applicable goal for the region. The Region shall reassess the goals at least annually.

3. Project Goals. The Region may establish a goal higher or lower than the regional goal for individual projects, depending upon availability of WBEs and the nature of the project.

4. Application of Goal. All prime construction contracts of $500,000 or more and all prime contracts for architectural, engineering, and related services of $10,000 or more shall be subject to the application of the goal.

5. Method of Calculating WBE Participation. The percentage of contract dollars awarded to women-owned businesses of total contract dollars (as defined in paragraph C.4) awarded under a grant shall represent the level of WBE participation.

D. EPA Responsibilities.

1. Headquarters Responsibilities.

a. The Women's Business Enterprise Officer in OSDBU with the assistance of the Office of Water Program Operations will compile and maintain a source list of WBEs. This source list will be available to the Regions for distribution to grantees, consultants, contractors, and bidders/offerors. The source list will not serve as EPA certification or recognition of the authenticity or competency of any WBE listed. The purpose of the source list is to serve as one, but not the exclusive, resource for locating WBEs.

b. The Women's Business Enterprise Officer will provide assistance and direction in support of the policy in this memorandum, and, within the limits of available resources, will coordinate an outreach program to identify and inform women-owned businesses which are potential participants in the Construction Grants Program.

2. Regional Responsibilities.

a. Each Regional Administrator shall ensure that EPA regional responsibilities under this memorandum are met. Each Regional Administrator will make an effort to ensure that a broad range of WBEs in a variety of disciplines will be used to meet the goals. Each Regional Administrator is authorized to establish and publish other criteria for determining what constitutes a WBE firm, if the requirements of local business practices or state laws in a region justify further means of ensuring that the objectives of Executive Order 12138 are met.

b. Each Regional Administrator shall establish a regional goal, with the assistance of the Director of the Office of Civil Rights and Urban Affairs (OCRUA) and the Water Division Director and with the advice of Regional Counsel. The Region in consultation with the grantee may establish project goals. In establishing goals, the Region shall consider views of women-owned businesses, women's organizations, representatives of construction and engineering firms, technical and professional organizations, women's banks, affected public agencies, and the public.

c. Promptly after establishing its regional goal in accordance with paragraph C.2. each Region shall distribute a statement of its goals and this policy to the affected States, grantees, all potential grantees (i.e., those in the fundable portion of the State's project priority list), women-owned firms on the source lists grantees have developed under paragraph E., and other appropriate organizations and individuals. This distribution shall be repeated at regular intervals and whenever goals change.

d. In administering this PRM, each Region shall ensure that grantees and their consultants and contractors do not "double count" minority women for purposes of the WBE and MBE goals. The prime contractors and consultants may choose the goal towards which the minority WBE will apply. It will be acceptable for the contractors and consultants to divide the total credit between the WBE and MBE goals. For example, where a minority WBE will perform six percent of the work, the credit may be distributed in a number of ways, including:

1. 6% to WBE, 0% to MBE; or
2. 0% to WBE, 6% to MBE; or
3. divided, for example 3% to WBE, 3% to MBE.

e. Each Region shall review solicitation inserts to ensure that this policy is adequately reflected in all solicitations for contracts and other subagreements under grants. OCRUA may assist in the review of solicitation documents.

f. Each Region shall establish a process of review and monitoring to ensure that grantees and their consultants and contractors make positive efforts to use women-owned businesses.

g. Each Region shall maintain records on awards of contracts to WBE firms, to be submitted quarterly to Headquarters Office of Water Program Operations, which in turn will apprise OSDBU of regional performance.

h. Each Region shall assist the Women's Business Enterprise Officer in OSDBU in developing source lists of WBE firms, in cooperation with grantees, States, and interested persons and organizations.

E. Grantee Responsibilities. The grantee has primary responsibility for taking positive actions to ensure maximum feasible participation by women-owned firms in Steps 1, 2, 3 and 2 + 3 projects. At a minimum, these positive efforts shall include the following:

1. Each grantee shall include the project goal in each procurement solicitation.

2. Each grantee must ensure that procurement documents contain the following information:

a. Clear notice of the applicable goal, including a number or range of numbers, and the obligations of the bidder/offeror under the policy.

b. The method by which positive efforts of the bidder or offeror will be evaluated.

c. A notice of federal and grantee sanctions for failure to comply with the positive efforts in the solicitation documents.

d. A copy of this policy.

3. Each grantee shall cooperate with the State and appropriate Regional Office in developing and updating a source list of women-owned businesses which might be interested in seeking a consultancy, contract, or other subagreement under the EPA-assisted project.

4. Each grantee shall provide a source list of women-owned firms to all prospective consultants and contractors, and inform them of EPA policy on use of women-owned businesses.

5. Each grantee shall ensure that notification of prospective procurement actions is provided to women-owned firms in sufficient time to respond. This responsibility includes ensuring that the grantee's contractors, consultants, and subcontractors, in their respective procurement action, notify women-owned firms in a timely fashion.

6. Each grantee shall verify that women-owned businesses designated by bidders or offerors are available to participate in the project. This verification will occur as part of the determination of a bidder or offeror responsibility.

7. Each grantee is encouraged to provide liaison services between WBEs and prospective bidders/offerors

> NOTE: Reasonable costs of WBE liaison services, as determined by the EPA Project Officer, are allowable costs (liaison services are the services of a grantee, staff person or other entity which helps the grantee conduct responsibilities related to this policy).

F. Responsibilities of Consulting Firms and Contractors. All consulting firms and contractors of the grantee, including WBE firms, are expected to make good faith positive efforts to identify and use women-owned businesses, in accordance with the policy, goals, and requirements of this memorandum. Appropriate positive efforts should begin during negotiation or bid preparation and continue throughout the life of the contract. Such efforts shall include, but not be limited to, the following:

1. Extending opportunities to women-owned businesses for subcontracting, joint ventures, and provision of equipment, supplies and services.

2. Notifying women-owned businesses on a source list obtained from the grantee, and other women-owned businesses known to the contractor or consultant, of goals and opportunities to compete for or do business with the contractor or consultant within sufficient time to respond. Use of EPA's source list does not, in and of itself, satisfy the requirements to use positive efforts.

3. Providing the grantee with adequate documentation of positive efforts, including nature and dollar amount of work to be performed by WBEs, and, if the goal will not be met according to the estimates currently available, documentation showing WBEs contacted, WBE responses, and reasons for non-selection of WBEs.

4. Maintaining records, to be available to the grantee and EPA, of the efforts under paragraphs 1., 2., and 3., and of awards to women-owned firms.

5. Making positive efforts to compensate for any changes in plans to award subcontracts to women-owned firms, and informing the grantee and EPA of such actions.

6. Meeting the requirements of paragraph (J) below.

G. What Women-Owned Firms Should Do. Women-owned businesses should become knowledgeable about and involved in the State and local project planning process under the Construction Grants Program. Women-owned firms should provide statements as to the nature and scope of their business and capability statements to the Women's Business Enterprise Officer in OSDBU for inclusion on the source list, as well as to the EPA Regional OCRUA, appropriate State and local government agencies, and contractors and consultants doing business in the Construction Grants Program. WBEs should make efforts to establish contracts and rapport with businesses recognized as potential contractors and consultants.

H. Sanctions.

1. Responsibility Determination. In the event a bidder or offeror fails to objectively demonstrate positive efforts the grantee shall request, in writing, that the bidder or offeror provide evidence of positive efforts within 15 days of the request, or be held nonresponsible. The Regional Administrator may instruct the grantee to request such documentation after the Region reviews bid documents submitted by the grantee or any other available information. If the bidder or offeror fails to comply adequately with the request, the grantee shall determine this bidder or offer to be nonresponsible, and shall so advise the bidder or offeror promptly in writing with an explanation of the basis for the determination. A finding of nonresponsibility on a contract shall not prejudice the right of that bidder or offeror to submit bids or proposals on other EPA-funded projects. However, in determining responsibility, the grantee will consider any evidence it has concerning performance in relation to WBE obligations and goals under other contracts.

2. Protests.

a. If the bidder or offeror disagrees with this determination of nonresponsibility under paragraph H.1. the bidder or offeror may then file a protest under 40 CFR § 35.939.

b. A disappointed bidder, offeror or listed WBE may also file a protest under 40 CFR § 35.939 to challenge a determination that the apparent low bidder or offeror fulfilled the positive efforts requirements of this PRM.

3. Exceptions. Notwithstanding paragraph 1., the grantee may award a contract (with the approval of the Regional Administrator) where the bidder or offeror did not demonstrate positive efforts, if (a) delay incident to resolicitation would cause substantial harm to the grantee, and (b) the contract (i) requires specific positive efforts for compliance with this policy (including

goals) during contract performance, and (ii) includes appropriate sanctions for failure to perform in accordance with the contract (e.g., termination or liquidated damages).

4. Grantee's failure. If a grantee fails to meet its obligations under paragraph 1. above, or fails to meet any other requirement in this memorandum, EPA may declare the grantee nonresponsible under 40 CFR § 30.340, or deny, modify, suspend, or terminate assistance in accordance with 40 CFR Part 30, Subpart H.

I. Grantee's Higher Goals. Nothing in this policy prevents a grantee from setting higher goals for use of women-owned firms on work under EPA grants.

J. Contractors' and Consultants' Responsibilities After Award. If requested, contractors and consultants shall submit to the grantee copies of, or information concerning, awards to women-owned firms, and lists of WBE firms contacted and used. From time to time (but not more often than quarterly), the contractor or consultant will be expected to comply with requests from the grantee for information on the status of compliance with the policy and requirements in this memorandum. In the event a consultant or contractor fails to conform to its obligations under this memorandum, the grantee will require corrective efforts or, as appropriate, modify, suspend or terminate the contract or subagreement.

K. Reexamination of Policy.

1. Review of the national goal will take place annually.

2. By October 1, 1983, the Administrator will examine this policy and its implementation and may modify the policy as is appropriate.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JUL 9 1980

OFFICE OF WATER
AND WASTE MANAGEMENT

Construction Grants
Interim Program Requirements Memorandum
PRM No. 80-5

SUBJECT: Buy American

FROM: Henry L. Longest, II, Deputy Assistant Administrator
for Water Program Operations (WH 546)

TO: Regional Administrator
Regions I - X

I. PURPOSE

This PRM sets forth interim Agency policy and procedures concerning the application of the Buy American provision of the Clean Water Act of 1977 and the final regulations governing the Construction Grants Program for municipal wastewater treatment works published in the Federal Register of September 27, 1978 (Part III). PRM 78-3 concerning the same subject is superceded, as well as the temporary guidance document of January 9, 1979. This interim PRM was developed because numerous requests were received from the public for further clarification of the application of the Buy American provision. This interim PRM is also being published in the Federal Register with a 90-day period provided for comments and suggestions. Issues which have come to the attention of EPA are addressed. If there are others, EPA would appreciate being informed of them, with suggested resolution.

II. DISCUSSION

Section 39 of the Clean Water Act of 1977 added a new section 215 to the Federal Water Pollution Control Act. This new section requires that only manufactured and unmanufactured materials and supplies that have been mined, produced or manufactured in the United States, and are substantially all From United States' sources, shall be used in treatment works for which grant assistance is provided by EPA. This is known as the Buy American provision and it applies to any Step 3 grant for which application is made after February 1, 1978.

In the legislative history of the provision, Congress directed that the Buy American regulations of other Federal departments and agencies be followed, where applicable. These other regulations are generally incorporated in the federal procurement regulations in the Code of Federal Regulations which are generally based on the Buy American Act of 1933 (42 U.S.C.A. 10a-d) and an Executive Order of 1933, with subsequent updates, which interpreted several aspects of the Act. (See Executive Order 10582, December 17, 1954, as amended by Executive Order No. 11051, September 27, 1962.).

EPA issued its own final provision for Buy American in the Construction Grants regulations by adding a new paragraph (d) to 35.936-13 (Specifications) which requires that bidding documents and construction contracts for affected projects include a Buy American provision which requires use of domestic construction material, substantially all from United States' sources, in preference to foreign construction material. The regulations also establish those circumstances under which the Agency may waive the provision. Domestic construction material must be given preference if the domestic material is priced no more than 6 percent higher than the bid or offered price of foreign materials (including import duties). The application of the Buy American provision normally occurs after bids or price quotations have been received.

Appendix C-2 to Subpart E was also amended by adding a new Clause 17 which implements the Buy American provision in construction contracts.

III. POLICY

In contracting for wastewater treatment works being assisted by the EPA municipal wastewater treatment Construction Grants Program, a price preference of up to 6 percent is required to be given to construction materials that have total component costs of over 50 percent in value from domestic sources, when such materials are in price competition with construction materials that have component costs of 50 percent or more in value from nondomestic sources (subject to waiver from the Regional Administrator, where appropriate).

IV. IMPLEMENTATION

1. The Three-Procedure Buy American Process

In implementing the Clean Water Act Buy American provision, there are three major procedures that take place:

First Procedure: Determination of the "construction material" to which the Buy American provision applies.

Second Procedure: Application of the "manufactured in United States" and "50 perecent rule" to the construction materials so as to classify as domestic or nondomestic material.

Third Procedure: Application by the prime construction contractor of the 6 percent price preference for domestic materials to the bids or price quotations where domestic and nondomestic construction materials are in competition.

These procedures are discussed below and are also set forth in an overall chart at the end of this Interim PRM. Because of the complexities in applying the Buy American Act of 1933 and subsequent Executive Orders, regulations, guidances and decisions, it is suggested that the following description of the Buy American procedures be read in conjunction with the simplifying chart.

First Procedure: Determination of the Construction Material to Which the Buy American Provision Applies

EPA regulations and the Federal Procurement Regulations refer to "construction materials" as subject to the Buy American provision. The regulations define construction material as any article, material or supply brought to the construction site for incorporation into the treatment works. Construction materials are sometimes referred to as "end products." Installation and other services to be performed after delivery are normally excluded. The Buy American provision does not apply to material which a contractor utilizes for construction but which the project specifications do not require to be incorporated into the treatment works. Examples include protective covers for building materials or building forms used in construction, whether or not left in the ground.

In practice, construction materials are those items that are referred to as separate distinct items or unit processes in the specifications for the project. Normally, for example, there will be only a limited number of separate items of equipment that are listed in the specifications for both technical and bidding purposes, such as a filter press, incinerator, aerator equipment, large pump, etc. These are the types of equipment "end products" to which the Buy American provision is applied. The grantee will normally be best able to decide upon the appropriate classification of items. If there are problems, the grantee may seek assistance from the EPA Regional Office which may consult EPA Headquarters. The State Agency should be notified by the grantee that this assistance is being requested.

Construction materials are of two types--manufactured or unmanufactured--and are of either domestic or nondomestic origin. Construction materials may be made up of "components." A component is any article, material or supply which is directly incorporated into a construction material. The 6 percent price preference, as described in the Third Procedure, is applied to construction materials and not components.

Unmanufactured Construction Materials

An unmanufactured construction material is a raw material that is mined or grown. A unmanufactured construction material is a "domestic construction material" if it has been mined or produced in the United States. It should be relatively easy to identify raw materials and their national origins. A raw material could be, for example, gravel that in the case of municipalities on international boundaries could come from either the United States or an adjacent foreign country. If the domestic gravel is in price competition with nondomestic gravel, the domestic gravel will receive a 6 percent price preference as explained later. If the gravel is incorporated into concrete which is delivered to the site, then it is a component of a manufactured construction material.

Manufactured Construction Materials

Manufactured construction materials, as applied to sewage treatment facilities construction, refer to material such as pipe for sewers, reinforcing steel or structural steel for erecting buildings, and equipment that is necessary for the project. These items will usually be listed in the project specifications in separate sections. In the case of equipment, construction materials could include such items as incinerators, aerators, filter presses, large pumps, etc., as separate, distinct items or unit processes. Usually equipment that is identified as a construction material will be that which will usually be supplied by one supplier or manufacturer, is included within one section of the specifications, and is treated at the construction site as a separate item of equipment.

Accordingly, an integrated equipment package that is normally supplied by a single supplier as a trade practice could be considered as one item of equipment if included as such in specifications. Also, equipment that is listed in the specifications as a separate, distinct item will usually be treated as a single product even though delivered to the construction site in a number of separate components to be assembled and incorporated into the treatment works.

The identification of a piece of equipment as a manufactured material or a component of a manufactured material will sometimes vary depending upon the particular situation. The same generator, for example, may be a separate identifiable construction material in one instance, and a component of a larger item, such as an incinerator, in another instance. The particular circumstances have to be considered, but the item that is identified within a separate section of the specifications and is treated at the construction site as a distinct, complete item will normally determine that to which the Buy American provision is to be applied.

A sewage treatment plant, as an entity, would normally not be considered the end product.

Second Procedure: Application of the "Manufactured in United States" Requirement and the 50 percent Rule to Construction Materials

In the case of manufactured construction materials, the statute and regulations create a preference for construction materials "manufactured in the United States" that are "substantially all" from materials, articles or supplies of domestic origin. Construction materials that meet this test are known as "domestic," those that do not are "nondomestic."

Federal procurement regulations specify that to be "domestic," a manufactured construction material must meet two tests: (1) it must have been manufactured in the United States, and in addition, (2) the cost of its components which are mined, produced, or manufactured in the United States must exceed 50 percent of the cost of all its components (termed "substantially all") from domestic sources. If a construction material does not meet both of these two tests, it is considered to be "nondomestic." Explanatory comments on these two tests follow:

(1) Manufactured in the United States

The Buy American provision requires that to be domestic, construction materials must be manufactured in the United States (includes all jurisdictions defined as a "State" in Section 502(3) of the Clean Water Act, 33 USC 1362(3)). A construction material will not be considered domestic if it is manufactured entirely outside the United States from domestic components. The "manufactured in the U.S." test is applied very broadly. For example, the Comptroller General has ruled that the mounting of electric motors on an otherwise inoperable imported pump unit constituted "manufacture" of the unit. However, the Comptroller General has also ruled that the mere packaging of an item is not manufacturing, nor are testing and evaluation of items considered manufacturing.

The determination as to whether or not an item is manufactured in the United States is not expected to be very difficult in the ordinary run of cases. If there are problems, they will be resolved by the grantee or the EPA Regional Office, with appropriate assistance from EPA Headquarters.

(2) The "Substantially All" (50 Percent) Test

Once the "manufactured in the United States" test has been satisfied, a manufactured construction material must satisfy the "substantially all" (50 percent) test. The rules for applying this test have been established by the Comptroller General (46 Comp. Gen. 784).

This test provides that a manufactured construction material is classified as domestic if the cost of its components which are mined, produced, or manufactured in the United States exceeds 50 percent of the cost of all of its components. A component is an item which actually becomes part of the construction material. Manufacturing costs to assemble the components into the final product are not considered in applying the 50 percent rule. For purposes of determining the ratio of domestic component cost to total component cost, items such as packaging, shipping, labor and other production costs, testing and profit, are not considered (as these are not components).

An example with an explanation of the application of the 50 percent rule follows:

Shipping
Labor
Testing
Profit $12,000
Other Production Costs

Final manufacturing costs not considered in 50 percent

Component A	Component B	Component C	Component D
Foreign	Domestic	Domestic	Domestic*
$20,000	$4,000	$6,000	$8,000

Basis of 50 percent cost determination

* - Component made by equipment manufacture itself (priced as though it were purchased from another manufacturer or supplier)

In this illustration, there are four components that make up the composition of a piece of equipment. Foreign component "A" costs the manufacturer $20,000. Components "B" and "C" are purchased from domestic manufacturers and total $10,000 together. Component "D" is manufactured by the manufacturer itself and has a value, as though it were purchased like the other domestic components, of $8,000. The value assessed should be at the component rather than spare parts level. To compute the 50 percent rule, the value of the domestic components ($18,000) is compared to the value of the total of all of the components ($20,000 + $4,000 + $6,000 + $8,000 = $38,000). As the total value of all of the components is $38,000, and the value of the domestic components ($18,000) constitutes 47.5 percent of the total value, the equipment is determined to be nondomestic as the domestic value is not over 50 percent of the total value. Note that the $12,000 in final manufacturing costs is not permitted to enter into the computation. It is only the value of the components that is considered (based on the 1967 GAO decision). Also note that the 6 percent cost preference rule is not applied during this evaluation (by GAO decision) as it is used by the prime contractor only in the evaluation of price quotations from suppliers or manufacturers.

The 50 percent test does not require the contractor, subcontractor or other lower tier supplier who might supply construction materials to consider the national origin of the materials that have been used in the manufacture of the components which make up the construction material to be delivered. To have the cost of a component be regarded as "domestic" for purposes of the 50 percent test, it need only be established that the component was mined, produced or manufactured in the United States. In other words, the 50 percent test is not applied to the composition of each component; rather, the component is considered only as to where it was mined, produced, or manufactured. 45 Comp. Gen. 658 (1966).

Third Procedure: Application of the 6 Percent Price Preference for Domestic Construction Materials to Bids or Price Quotations

When domestic and nondomestic materials are in competition, the prime construction contractor, as well as subcontractors, are required to apply the Buy American provision to give preference to domestic construction materials when the domestic material has a delivered price of no more than 6 percent over the nondomestic material.

The differential by which domestic construction material may be given preference shall generally be the sum determined by computing up to 6 percent of the bid or offered price of materials of foreign origin including all costs of delivery to the construction site, including any applicable duty, whether or not assessed. Computations will normally be based on prices on the date of opening of bids or the date of price quotations.

The contractor applies the Buy American provision at the time that the identity of the material and its prices become known. For example, the identity and the delivered price of a construction material may be able to be determined at the time of bid submittal. At other times it may be when shop drawings are submitted. If the original selection is changed or a change order involves construction materials, then the contractor will have to reapply the Buy American requirements.

If the prime contractor does not properly comply with the Buy American provision by providing a nondomestic material when a domestic material should have been chosen, it may be required to substitute the domestic material at no change in price. If the material has been irrecoverably incorporated into the treatment works, then the grantee may assess the contractor for the difference in the costs of the domestic and nondomestic materials that were in competition.

It should be noted here that a manufacturer or supplier of a domestic material must have made a bid or price quotation on the project at the time appropriate time for doing so. A manufacturer or supplier cannot, after the fact, unilaterally secure use of its domestic material by stating that it will supply it for a price within the 6 percent variation.

V. WAIVERS

In accordance with the EPA Buy American statute, the Regional Administrator may waive the Buy American provision based on those factors deemed relevant, including:

(1) Inconsistency with the public interest, including multilateral government procurement agreements.

(2) Unreasonable cost of the domestic material.

(3) Unavailability of the material from domestic sources in sufficient and reasonably available commercial quantities and of a satisfactory quality.

(4) Unavailability of Agency resources to carry out the provisions.

These four provisions are summarized as follows:

(1) Inconsistency with Public Interest, Including Multilateral Government Procurement Agreements

The public interest waiver has traditionally been included in Buy American regulations to cover unforeseen circumstances. For example, it has been held that the determination that domestic sources will be unable to satisfy the needs for material in a timely manner will suffice as a basis for this waiver. In addition, the Congress in December 1977 included the possibility of a waiver for inconsistency with multilateral government procurement agreements. This provision was included in the context of the multilateral trade agreement which the White House was negotiating with other nations to remove obstacles to world trade. The legislative history of the Trade Agreements Act of 1979 specifically states that the Buy American provisions in the Clean Water Act will not be affected by the Trade Agreements Act. Therefore, no waivers will be made in connection with that Act.

The Regional Administrator may make the public interest determination, but the Deputy Administrator must be consulted on any waiver based on the multilateral government procurement agreement clause.

(2) Unreasonable Cost of the Domestic Material

The cost of domestic material is considered to be unreasonable when the delivered price of a domestic material exceeds the delivered price of a nondomestic material by more than 6 percent. Under these circumstances, the waiver is automatic, and no application for a waiver needs to be made to the Regional Administrator.

(3) Unavailability of Domestic Materials

Where a construction material is not mined, produced, or manufactured in the United States in sufficient and reasonably available commercial quantities or satisfactory quality for the particular project, a nondomestic source may be used. A component that is domestically unavailable will be treated as a component manufactured in the United States.

(4) Unavailability of Agency Resources to Implement the Buy American Provision

The Congress provided EPA with the authority to waive the implementation of the Buy American provision if EPA resources are not sufficient to carry out the provision. The Regional Administrator, with the concurrence of the Deputy Administrator, may exercise this authority. (The use of this waiver would be a policy decision of some magnitude and is expected to be used only in extraordinary circumstances.)

In answer to several comments, consideration was given to establishing a floor of $10,000 below which Buy American would be waived but this was not found to be possible. Comments are, however, requested on the concept of a floor.

VI. REQUIRED STATEMENT IN BIDDING DOCUMENTS

EPA regulations (40 CFR 35.936-13(d)(4)) provide Buy American provisions that must be included in the bidding documents (along with the rest of 40 CFR 35.936, 35.938, and 35.939).

VII. REQUIRED STATEMENT IN STEP 3 CONTRACTS

Appendix C-2 of the Construction Grants Regulations provides the Buy American provision for all construction contracts.

VIII. ACCESS TO RECORDS

A supplier or manufacturer is obligated to disclose upon request, cost and price information to the Regional Administrator to the extent necessary to determine compliance with the Buy American requirement: However, confidential business data will be protected from public disclosure by the Regional Administrator.

IX. PROTESTS

Any party with an adversely-affected direct financial interest may protest an alleged violation of the Buy American provision in accordance with 40 CFR 35.939 of the regulations for grants for construction of treatment works.

The Regional Administrator may handle protests under the appropriate procedures of 40 CFR 35.939. In making determinations, the Regional Administrator shall generally use the "Buy American" procedures, regulations, precedents and requirements of other Federal departments and agencies.

BUY AMERICAN PROCEDURES

FIRST PROCEDURE	SECOND PROCEDURE	THIRD PROCEDURE
Identification of construction material to which to apply Buy American.	Application of 50% rule to determine if construction material is domestic or nondomestic (usually done by manufacturer).	Application of 6% price preference for domestic construction materials. (Prime Contractor)
DEFINITION OF CONSTRUCTION MATERIAL Any article, material or supply brought to the construction site for incorporation into the treatment works. Construction materials are either manufactured or unmanufactured.		
MANUFACTURED CONSTRUCTION MATERIAL Specifications will normally identify manufactured "end products" that are to be delivered to construction site; e.g., steel beams.	**MANUFACTURED CONSTRUCTION MATERIAL** First Test: If construction material is manufactured in foreign country, it is nondomestic. Second Test: If construction material is manufactured in the U.S., add up costs to manufacturer of all "components." Exclude profit, labor & other production costs to manufacture the components into construction material. If over 50% of total costs of components is from U.S. sources, the construction material is domestic, if not, it is nondomestic.	**MANUFACTURED CONSTRUCTION MATERIAL** Contractor determines comparable delivered prices to the construction site of the domestic & nondomestic construction materials that in competition. If the domestic price is no more than 6% higher than the nondomestic price, the domestic construction material must be selected (subject to statutory waivers such as inconsistency with public interest & unavailability of domestic sources).
UNMANUFACTURED CONSTRUCTION MATERIALS Unmanufactured construction materials to be delivered to construction site (usually mined or grown; e.g., gravel, are normally self-evident.	**UNMANUFACTURED CONSTRUCTION MATERIALS** Source of unmanufactured construction materials identifies it as domestic or nondomestic.	**UNMANUFACTURED CONSTRUCTION MATERIALS** Same procedure as for manufactured. Above.
	PROPOSED STATEMENT ON MATERIALS Manufacturer or supplier of construction material to provide contractor with statement that material is domestic or nondomestic, based on cost of components.	**PROPOSED STATEMENT ON MATERIALS** Prime contractor to provide statement that prices of nondomestic construction materials selected are more than 6% less than quoted prices of domestic equipment or major materials. Maker of statement must keep price records so as to be prepared to justify selection of nondomestic materials upon request

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APPENDIX A

PROPOSED REQUIRED STATEMENTS OF MANUFACTURERS OR SUPPLIERS, AND PRIME CONTRACTORS IN REFERENCE TO THE BUY AMERICAN PROVISION

A. Statement on Component Contents of a Construction Material

EPA is concerned that in applying the Buy American provision of the Clean Water Act of 1977 and implementing regulations, the prime contractor may not know when it is involved in dealing with a non-domestic construction material so that it can apply the up to 6 percent price preference for domestic construction materials.

To assist the prime contractor for construction in applying Buy American, a method is needed to inform the contractor when non-domestic materials are involved. No problem is anticipated with unmanufactured materials or foreign manufactured materials that are identified as foreign in invoices or by markings on the material. However, difficulties can occur when a domestic manufacturer provides materials that have a 50 percent or more foreign content, but there is no labeling or other information as to foreign content.

To remedy this problem, EPA is considering that a statement be required from the manufacturers or suppliers of major equipment or major materials, such as pipe, structural steel, or bulk materials, as listed in the specifications. The statement would read that the aggregate cost of the components, as determined according to the 50 percent method described in the PRM amounts to a construction material that is domestic or nondomestic. A sample is as follows:

> "The value of the components comprising the construction material identified as ________________ in contract number ______________ for the sewage treatment project for the municipality of _______________ is (or is not) over 50 percent from United States sources and is therefore domestic (or not domestic) as described in EPA PRM dated _________________.

Manufacturers or suppliers that state that their product is domestic must be prepared to substantiate these claims during future audits or protest actions.

Comments are invited as to whether EPA should require such a statement to accompany every bid or price quotation of every major equipment or main materials item, or only upon request when a protest occurs.

B. Statement of Contractor on Nondomestic Construction Materials

To facilitate the application of the Buy American provision, EPA is considering requiring that when nondomestic materials are chosen, the prime contractor must provide the grantee with a statement that (1) all material to be furnished is domestic, except for that shown on an attached list displaying major nondomestic equipment or materials chosen, for which the quoted delivered price of the nearest competitive domestic equipment (if received) was more than 6 percent over the quoted delivered price of the nondomestic equipment, or (2) the equivalent domestic material is unavailable. The contractor will maintain records to document the price differentials, for possible audit verification of its compliance or for other purposes. The statement itself will not require the listing of prices.

Comments are invited on this provision which is substantially required by at least one other Federal agency for direct government procurement.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

AUG 2 S 1980

OFFICE OF WATER
AND WASTE MANAGEMENT

Construction Grants
Program Requirements
Memorandum
PRM No. 80-7
Effective Date -
October 1, 1980

SUBJECT: Grant Eligibility of Minority Business Enterprise and Women's Business Enterprise Liaison Services

FROM: Henry Longest, Deputy Assistant Administrator
for Water Program Operations (WH-546)

Robert J. Knox, Acting Director
Office of Civil Rights (A-105)

TO: Regional Administrators, Regions I - X
ATTN: Water Division Directors
Office of Civil Rights Directors

I. PURPOSE

The purpose of this memorandum is to define and set forth guidelines for determining the grant eligibility of Minority Business Enterprise (MBE) and Women's Business Enterprise (WBE) liaison services performed during the process of planning, designing and constructing a wastewater treatment facility with Environmental Protection Agency (EPA) construction grant funds.

II. DISCUSSION

The Agency recognizes the need to immediately remedy the under-utilization of MBEs and WBEs in the Construction Grants Program. In order to provide the opportunity for increased MBE and WBE participation, EPA has determined that a goal oriented system of MBE and WBE participation must be a clear-cut factor in the evaluation of procurements, bids or proposals, as well as a condition for a grant award. One method of affording the opportunity for increased MBE and WBE participation is for grantees to establish or utilize MBE and WBE liaison services. The costs to the grantees for such services are eligible for EPA grant funding.

Such services will assist applicants/grantees to effectively implement the goal-oriented EPA "Policy for Increased Use of Minority Consultants and Construction Contractors", 43 Federal Register 60221 (December 26, 1978), and the "Women's Business Enterprise Policy for the Construction Grants Program," 45 Federal Register 51490 (August 1, 1980). See also, 40 C.F.R. 35.936-7, 40 C.F.R.§35.937-12 (b)(2), Appendix C-1 (para. 14), and Appendix C-2 (para. 9). These policies require grantees, consultants and contractors to take affirmative steps to utilize minority-and women-owned businesses in providing engineering and construction services and supplies.

Grantees may formally provide for such services by selecting:

1. An MBE/WBE liaison officer from internal staff (Additional staff may supplement internal staff only if required by project size) or

2. A contractor to perform such services (Contract services may be provided by either an MBE or WBE specialist or by a capable consulting firm).

The MBE/WBE liaison officer/service would be responsible for developing, implementing and managing the grantees MBE and WBE programs as they relate to the specific EPA funded project. Responsibilities include, but are not limited to: keeping records, providing technical assistance to MBEs, disseminating information on available business opportunities related to EPA grant projects to ensure that MBEs are provided an equal opportunity to participate in EPA's Construction Grants Program.

In order to effectively carry out the aforementioned responsibilities, the MBE/WBE liaison officer/service selected should be:

a. Familiar with and capable of interpreting and communicating the grantee's procurement procedures and requirements as well as EPA's MBE/WBE policies,

b. Understanding of small, minority, and women's business problems,

c. Capable of communicating effectively with women-minority-and majority-owned businesses and management,

d. Able to maintain a good rapport with the minority community,

f. Familiar with Federal, State and local resources available to aid MBEs, WBEs and small business, and

e. Able to maintain a good rapport with the women's business and community organizations.

III. POLICY

This PRM confirms EPA's policy that costs incurred by the performance of appropriate and necessary MBE/WBE liaison services, either by grantee staff or by contractor, which are directly related to a particular EPA funded construction project, are eligible for EPA grant participation.

IV. IMPLEMENTATION

Only necessary liaison services rendered in direct connection with an EPA Construction Grants Project by the MBE/WBE liaison officer/ service are grant eligible costs. While the provision of MBE and WBE liaison services is an eligible cost, it must be borne in mind that EPA will participate in the costs for hiring additional staff only in municipalities having ongoing and continuous EPA construction grants projects, large enough to support the need for such staff. Contracts for MBE/WBE liaison services which depart from conventional industry practices and which constitute a commercially unnecessary intermediate step between a grantee, liaison officer, consultant or contractor shall be considered ineligible.

Measures to achieve MBE and WBE program requirements should be submitted as part of the Step 1, Step 2, Step 3, and Step 2+3 grant applications. State agencies and potential grantees should be encouraged during the pre-plan-of-study conferences to integrate planning for use of MBEs and WBEs into each phase of the construction grant process and to achieve designated goals. This enables the Agency to judge before awarding financial assistance whether EPA funds are likely to be used to achieve the objective of increasing MBE and WBE participation.

The grantee must maintain complete records of MBE/WBE liaison services. Such records must include:

a. A brief narrative summary of activities conducted.

b. Certified time and attendance records clearly establishing relationship to EPA's MBE and WBE programs.

c. Bills/vouchers covering travel and other expenditures incurred in fulfilling the grantee's responsibilities under the MBE and WBE policies.

d. Documentation sufficient to constitute an audit trail of all costs charged to a specific project.

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

JAN - 7 1981

OFFICE OF WATER
AND WASTE MANAGEMENT

Construction Grants
Program Requirements Memorandum
PRM 81-1

SUBJECT: Issuance of Program Requirements Memorandum

FROM: Henry L. Longest II, Deputy Assistant Administrator
for Water Program Operations (WH-546)

TO: Regional and State Water Division Directors

PURPOSE:

The purpose of this memorandum is to: (1) set forth the new procedure for issuing construction grants program policy and (2) give formal notice of those Program Requirements Memoranda (PRMs) which have been eliminated due to obsolescence.

DISCUSSION:

Program Requirements Memoranda

A new procedure for transmitting PRMs is being implemented to streamline the issuance of construction grants program policy and to reduce the number of transmittals to the minimum necessary to maintain program direction and consistency.

One of the major problems with the present system has been maintaining its currentness. Accordingly, all PRMs issued since the inauguration of the system in 1976 have undergone a thorough review. The purpose of this review was to determine which PRMs were obsolete and which needed to be revised. Based on the recommendations of reviewers, including the Association of State and Interstate Water Pollution Control Administrators Task Force on Construction Grants, we have rescinded 39 PRMs which have been superseded, usually by subsequent laws, regulations or later PRMs. In addition, we have revised one PRM to make it consistent with current policies and consolidated nine others to eliminate multiple issuances on the same subject.

The list of PRMs being eliminated or revised, together with the reasons therefore, is appended to this document. The revised PRMs are being incorporated with existing current PRMs into a single document which will be made available to Regions, States, grantees and consultants.

Another source of difficulty with the current system has been that PRMs are issued individually as they are approved. As a result, program officials, grantees and consultants have not always received timely notice of these new issuances and the preparation and processing of required grant documents have had to be disrupted in order to bring them into compliance with new policies.

To resolve this problem, under the new system, all PRMs applicable during a fiscal year will be published together at the beginning of that fiscal year, instead of individually from time to time as each new one is approved. This will have the effect of limiting changes in grant procedures or requirements to once a year. Hence, the impact of changing policies on the movement of grants through the system will be minimized.

The new system will be implemented as follows. Prior to the end of each fiscal year, the existing set of PRMs will be reviewed and revised as necessary. To this updated set will be added those PRMs which were circulated for comment and approved during the fiscal year but not made effective until the beginning of the next fiscal year. The revised and new PRMs will be issued together in a single document which will become effective at the beginning of the new fiscal year. Under this system, requirements will not be applied retroactively nor instituted more often than annually.

Changes in the Construction Grants Handbook will also be made to keep it consistent with the most recent policy issuances. These changes will be published soon after the annual publication of the PRMs.

PRMs will continue to be used to convey construction grant program policy, the specific provisions of which are not available in existing regulations or in other EPA policy documents. PRMs will be signed by the Deputy Assistant Administrator for Water Program Operations who serves as national program manager for the construction grants program.

Program Operations Memoranda/Program Advisory Memoranda

The purpose of the Program Operations Memoranda (POMs) series is to disseminate administrative and technical guidance to those responsible for the internal operations of the construction grants program. POMs are addressed only to Regional and State Offices and should not affect individual grantee projects.

The purpose of the Program Advisory Memoranda (PAM) is to advise persons involved in the construction grants program of needed changes in, or of improved methods for, dealing with grant or grant-related activities. Such information may be intended for the use of grantees and consultants as well as State and Regional personnel. Because this information is intended primarily to provide guidance rather than to mandate action, the PRM designation is not applicable. Also, since such information may impact both grant submitters and grant reviewers alike, the traditional POM designation is not fitting. Accordingly, for such issuances, the designation Program Advisory Memoranda will be used.

POLICY:

Beginning October 1, 1981, only the requirements contained in the Fiscal Year 1982 PRM document will be effective for grants awarded in Fiscal Year 1982.

For Fiscal Year 1981, grants awarded after the publication of the January issuance of PRMs (MCD-02.11) will be bound by policy contained in that issuance. Future PRMs will be circulated in draft form for review as they arise. However, the effective date of each new PRM will be the October following its approval.

Annually, a purged set of old PRMs together with any new PRMs approved during the previous year, will be issued in one document. Regional and delegated State staff will have the opportunity to participate actively in this purging and approval process. Policies contained in the single document will be effective as of the beginning of the new fiscal year for all grants awarded during the fiscal year.

Attachment

ATTACHMENT: PROGRAM REQUIREMENTS MEMORANDUM 81-1
PRMs Cancelled

The following PRM's are cancelled for the reasons specified.

1. 75-1 Use of Revenue Sharing Funds for Waste Treatment Projects
   Policy no longer valid. Superseded by 31 CFR 51.40 and section 4 of P.L. 94-488.

2. 75-2 Experience Clauses for Equipment Suppliers
   Superfluous; policy set forth more completely at 40 CFR 35.936-13(c)

3. 75-3 Waste Stabilization Ponds
   Superfluous; policy set forth in 40 CFR 133.102(c).

4. 75-4 Standardized Construction Contract Documents
   Guidance no longer useful; contained in 40 CFR 35.938-8

5. 75-5 Non-Restrictive Specification
   Covered by 40 CFR 35.936-13(a) and (b).

6. 75-7 Sewer System Evaluation and Rehabilitation
   Covered by 40 CFR 35.927, 927-1 through 927-5

7. 75-8 Flood Disaster Protection Act of 1973
   75-9 Supplement to PG No. 25; Flood Disaster Protection Act of 1973 (PL 93-234)
   75-28 Flood Insurance Requirements Effective July 1, 1975
   All three are expressly superseded by PRM 76-5.

8. 75-10 User Charges and Industrial Cost Recovery System
   75-19 Cancelling PG-28 - User Charges and Industrial Cost Recovery System
   Superseded by PRM 76-5. New ICR systems eliminated by P.L. 96-483.

9. 75-12 Obligation; Recovery and Reallotment of Contract Authority Funds
   Guidance outdated.

10. 75-15 Class Deviation - Use of Force Account Work on Construction Grant Projects
    Grants deviation from outdated force account regulations (40 CFR 35.936-2(a) 1972 edition). New procedures are set forth at 40 CFR 35.936-14.

11. 75-16 Title II Regulations Concerning Reserve for Step 1 and Step 2 Projects
    Superseded by 40 CFR 35.915-1(d).

12. 75-20 User Charge Systems
Covered by revised regulations. 40 CFR 35.925-11(b), 35.925-13.

13. 75-21 Overruns, Reserves and Priority Lists
Subject matter no longer an issue; also, more appropriately Program Operations Memorandum (POM) material.

14. 75-22 Policy Re Retention of Payments
Superfluous; policy contained in 40 CFR 35.938-7

15. 75-23 Escalation Clauses in Construction Grant Projects
Information obsolete

16. 75-33 Discount Rate
78-2 Discount Rate
79-4 Discount Rate
80-1 Discount Rate
Current and future discount rate PRM's will specifically supersede prior discount rate PRM's and include a table listing the rate for previous years.

17. 75-34 Grants for Treatment & Control of Combined Sewer Overflows & Stormwater Discharges.
Section on stormwater treatment superseded by section 211(c) of Act & 40 CFR 35.925-21 which contains a flat prohibition against funding of separate stormwater treatment projects. Remainder of PRM integrated into "Facilities Planning 1981" (FP-81).

18. 75-40 Priority List Supplement to FY 1977 Construction Grants Guidance
77-7 Management of State Priority Lists
78-5 Interim Management of FY 1978 State Priority Lists under the 1977 Amendments
78-13 Interim Priority List Guidance for the Development and Management of FY 1979 State Priority Lists
79-6 Priority List Guidance for the Development and Management of FY 1980 State Project Priority Lists
These PRM's overlap and, policy in each subsequent PRM at least partially supersedes the previous issuance. Future priority list guidance will be issued in POMs.

19. 76-1 Construction Grant Program Issuance
76-2 Cancellation of certain Program Guidance Memorandum (PGM)
Superseded by PRM 81-1.

20. 76-4 Coordination of Construction Grants Program with EPA-Corps of Engineers Section 404/Section 10 Permit Programs
Policy integrated in Construction Grants Handbook of Procedures and "Facilities Planning 1981" (FP-81).

21. 77-6 Easements
Expressly superseded by PRM 80-3.

22. 77-8 Funding of Sewage Collection Projects
Superseded by PRM 78-9.

23. 78-3 Buy American
Expressly superseded by PRM 80-5

24. 78-6 ICR - Interim Guidance
All provisions have been incorporated into regulations; intended only as interim guidance

25. 78-7 Combined Step 2 & 3 Construction Grant Awards
Superseded by 40 CFR 35.903(b) & 40 CFR 35.909. See 43 Fed Reg 44036

26. 80-6 Retroactive Application of Program Requirements
Policy contained in Jepsen Amendment to FY-81 Appropriation Bill, P.L. 96-526.

PRMs To Be Discontinued Upon Publication of "Facilities Planning 1981" (FP 81)

PRM 75-26	Consideration of Secondary Environmental Effects in the Construction Grants Process
PRM 75-27	Field Surveys to Identify Cultural Resources Affected by EPA Construction Grants Projects
PRM 75-31	Facilitating EIS Preparation with Joint EIS/Assessments (Piggybacking)
PRM 75-32	Compliance with Title VI in the Construction Grants Program
PRM 75-38	Relationship Between 201 Facility Planning and Water Quality Management (WQM) Planning
PRM 76-3	Presentation of Local Government Costs of Wastewater Treatment Works in Facility Plans
PRM 77-4	Cost Allocations for Multiple Purpose Projects
PRM 78-9	Funding of Sewage Collection System Projects
	(NOTE: 40 CFR 35.925-13 will be modified to reflect policy as conveyed in Facilities Planning 1981.)
PRM 78-10	Infiltration/Inflow
PRM 79-3	Revision of Agency Guidance for Evaluation of Land Treatment Alternatives Employing Surface Application
PRM 79-8	Small Wastewater Systems

PRMs, Partially Cancelled By PRM 81-1, To Be Cancelled Upon Publication of "Facilities Planning 1981" (FP 81)

PRM 75-34	Grants for Treatment and Control of Combined Sewer Overflows and Stormwater Discharges
PRM 76-4	Coordination of Construction Grants Program with EPA - Corps of Engineers Section 404/Section 10 Permit Programs

PRM Partially Cancelled Upon Publication of "Facilities Planning 1981" (FP 81)

PRM 78-1	Erosion and Sediment Control in the Construction Grants Program Policy as it pertains to Facilities Planning integrated into "Facilities Planning 1981"

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
WASHINGTON, D.C. 20460

NOV 19 1980

OFFICE OF WATER
AND WASTE MANAGEMENT

Construction Grants
Program Requirements Memorandum
PRM #81-2

MEMORANDUM

SUBJECT: Discount Rate

FROM: Henry L. Longest II, Deputy Assistant Administrator
for Water Program Operations (WH-546)

TO: Water Division Directors
Regions I-X

This supersedes prior Program Requirements Memoranda (PRM) on the discount rate used by Federal agencies in the formulation and evaluation of plans for water and related land resources.

Discount rates applied to facility planning starts during prior fiscal years are:

1978 - 6 5/8 percent (PRM 78-2)
1979 - 6 7/8 percent (PRM 79-4)
1980 - 7 1/8 percent (PRM 80-1)

The Water Resources Council published new discount rate of 7 3/8 percent to cover the period of October 1, 1980 through September 30, 1981.

You should use this new discount rate in cost effectiveness analysis for facility plans starting 60 days or more after the date of this PRM.

A copy of the Federal Register notice published by the Water Resources Council is attached. Copies of this PRM should be furnished to the States and to new Step 1 grantees.

Attachment

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In order to prepare the recommendation to the President, the Trade Policy Staff Committee welcomes the views and comments of interested parties concerning the policy issues, economic and political, which should be considered in relation to the exclusion of this product from importation into the United States.

Written comments should be submitted in 20 copies to the Secretary, Trade Policy Staff Committee, Room 735, Office of the United States Trade Representative, 1800 G Street, N.W., Washington, D.C. 20506. Such submissions should be received by the close of business, November 14, 1980. For further information, call Alice Zalik (202) 395-3432.

Ann H. Hughes,

Chairman, Trade Policy Staff Committee.

[FR Doc. 80-32917 Filed 10-21-80; 8:45 am]

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[License No. 02/02-5385]

H.B.R. Capital Corp.; Issuance of a License To Operate as a Small Business Investment Company

On April 8, 1980, a notice was published in the Federal Register (45 FR 23843) stating that H.B.R. Capital Corporation, located at 1775 Broadway, New York, New York 10019, has filed an application with the Small Business Administration pursuant to 13 CFR 107.102 (1980) for a license to operate as a small business investment company under the provisions of Section 301(d) of the Small Business Investment Act of 1958, as amended.

Interested parties were given until the close of business April 25, 1980, to submit their comments to SBA. No comments were received.

Notice is hereby given that having considered the application and other pertinent information, SBA has issued License No. 02/02-5385 to H.B.R. Capital Corporation on October 9, 1980.

(Catalog of Federal Domestic Assistance Program No. 59.011 Small Business Investment Companies)

Dated: October 11, 1980.

Peter F. McNeish,

Acting Associate Administrator for Investment.

[FR Doc. 80-32[illegible] Filed 10-21-80; 8:45 am]

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WATER RESOURCES COUNCIL

Principles and Standards for Planning Water and Related Land Resources; Change in Discount Rate

Notice is hereby given that the interest rate to be used by Federal agencies in the formulation and evaluation of plans for water and related land resources is 7⅜ percent for the period October 1, 1980, through and including September 30, 1981.

The rate has been computed in accordance with Chapter IV, D., "The Discount Rate" in the "Standards for Planning Water and Related Land Resources" of the Water Resources Council, as amended (39 FR 29242), and is to be used by all Federal agencies in plan formulation and evaluation of water and related land resources projects for the purpose of discounting future benefits and computing costs, or otherwise converting benefits and costs to a common time basis.

The Department of the Treasury on October 16, 1980, informed the Water Resources Council pursuant to Chapter IV, D., (b) that the interest rate would be 10¼ percent based upon the formula set forth in Chapter IV, D., (a): "* * * the average yield during the preceding Fiscal Year on interest-bearing marketable securities of the United States which, at the time the computation is made, have terms of 15 years or more remaining to maturity * * *." However, Chapter IV, D., (a) further provides "* * * that in no event shall the rate be raised or lowered more than one-quarter of one percent for any year." Since the rate in Fiscal Year 1980 was 7⅛ percent (44 FR 62116), the rate for Fiscal Year 1981 is 7⅜ percent.

Dated: October 17, 1980.

Richard N. Vannoy,

Acting Director.

[FR Doc. 80-33303 Filed 10-21-80; 8:45 am]

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